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UNITED STATES BANKRUPTCY COURT

DISTRICT OF OREGON

In re

B. & J. Property Investments, Inc.,

Debtor.

Case No. 19-60138-pcm11

In re

William J. Berman,

Debtor

Case No. 19-60230-pcm11

**DEBTORS' AMENDED JOINT  
DISCLOSURE STATEMENT  
(~~JULY 15~~ OCTOBER 8, 2019)**

DEBTORS' AMENDED JOINT DISCLOSURE STATEMENT (~~JULY 15~~ OCTOBER 8, 2019)

**Tonkon Torp** LLP

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503-221-1440

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1 **I. INTRODUCTION AND SUMMARY**

2 **A. INTRODUCTION**

3 On January 17, 2019 (the “B. & J. Petition Date”), B. & J. Property Investments, Inc.  
4 (“B & J,” or the “Company”) filed a voluntary petition under Chapter 11 of Title 11 of the  
5 United States Bankruptcy Code (the “Bankruptcy Code”). On January 28, 2019 (the  
6 “Berman Petition Date”), William J. Berman (“Berman”) filed a voluntary petition under  
7 Chapter 11 of the Bankruptcy Code. On July 15, 2019, the Company and Berman  
8 (collectively, “Debtors”) filed this Disclosure Statement (the “Disclosure Statement”) with  
9 the U.S. Bankruptcy Court for the District of Oregon (the “Bankruptcy Court”) and their  
10 Joint Plan of Reorganization (the “Plan”). A copy of the Plan is included herewith.

11 This Disclosure Statement is being provided to you by Debtors to enable you to make  
12 an informed judgment about the Plan. This Disclosure Statement has been prepared to  
13 disclose information that in Debtors’ opinion is material, important, and helpful to evaluate  
14 the Plan. Among other things, this Disclosure Statement describes the manner in which  
15 Claims and Equity Securities will be treated. This Disclosure Statement summarizes the  
16 Plan, explains how the Plan will be implemented, outlines the risks of and alternatives to the  
17 Plan, and outlines the procedures involved in confirmation of the Plan. The description of  
18 the Plan contained in this Disclosure Statement is intended as a summary only and is  
19 qualified in its entirety by reference to the Plan itself. If any inconsistency exists between the  
20 Plan and this Disclosure Statement, the terms of the Plan shall control. You are urged to  
21 review the Plan and, if applicable, consult with your own counsel about the Plan and its  
22 impact on your legal rights before voting on the Plan.

23 Capitalized terms used but not defined in this Disclosure Statement shall have the  
24 meanings assigned to such terms in the Plan or the Bankruptcy Code. Factual information  
25 contained in this Disclosure Statement is the representation of Debtors only and not of their  
26 attorneys, consultants, or accountants. The information has been obtained from the books

1 and records of Debtors as well as other sources deemed reliable. Debtors have prepared the  
2 information contained herein in good faith, based on information available to Debtors. The  
3 information herein has not been subject to a verified audit. No representation concerning  
4 Debtors or the Plan is authorized by Debtors other than as set forth in this Disclosure  
5 Statement.

6 The statements contained in this Disclosure Statement are made as of the date hereof  
7 unless another time is specified herein and the delivery of this Disclosure Statement shall not  
8 imply that there has been no change in the facts set forth herein since the date of this  
9 Disclosure Statement and the date the material relied on in preparation of this Disclosure  
10 Statement was compiled.

11 This Disclosure Statement may not be relied on for any purpose other than to  
12 determine how to vote on the Plan. Nothing contained herein shall constitute an admission of  
13 any fact or liability by any party, or be admissible in any proceeding involving Debtors or  
14 any other party, or be deemed advice on the tax or other legal effects of the Plan on the  
15 holders of Claims or Equity Securities.

16 This Disclosure Statement has been approved by Order of the Bankruptcy Court as  
17 containing information of a kind and in sufficient detail to enable a hypothetical reasonable  
18 investor typical of holders of Claims or Equity Securities of relevant classes to make an  
19 informed judgment concerning the Plan. The Bankruptcy Court's approval of this Disclosure  
20 Statement, however, does not constitute a recommendation by the Bankruptcy Court either  
21 for or against the Plan.

22 The Bankruptcy Court has scheduled a hearing on confirmation of the Plan to  
23 commence on \_\_\_\_\_, 2019 at \_\_\_\_\_ Pacific time. That hearing will be held at  
24 the U.S. Bankruptcy Court for the District of Oregon, 1050 SW Sixth Ave.,  
25 Courtroom \_\_\_\_\_, Portland, Oregon 97204, before the Honorable \_\_\_\_\_.

26 The hearing on confirmation may be adjourned from time to time by the Bankruptcy Court

1 without further notice except for an announcement made at the hearing on any adjournment  
2 thereof.

3 A ballot has been enclosed with this Disclosure Statement for use in voting on the  
4 Plan. In order to be tabulated for purposes of determining whether the Plan has been  
5 accepted or rejected, ballots must be received at the address indicated on the ballot no later  
6 than 4:00 p.m. on \_\_\_\_\_, 2019. Debtors believe that confirmation of the Plan is in the  
7 best interests of the holders of Claims and urge you to accept the Plan.

8 This Disclosure Statement contains projected financial information and estimates that  
9 demonstrate the feasibility of the Plan of Reorganization and Debtors' ability to continue  
10 operations upon emergence from proceedings under the Bankruptcy Code. Debtors prepared  
11 such information for the limited purpose of furnishing information to Creditors to allow them  
12 to make an informed judgment regarding acceptance of the Plan of Reorganization. The  
13 projections and estimates of value should not be regarded for the purpose of this Disclosure  
14 Statement as representations or warranties by Debtors as to the accuracy of such information  
15 or that any such projections or valuations will be realized. Actual results could vary  
16 significantly from these projections.

## 17 **B. SUMMARY OF THE PLAN**

18 A copy of the Plan is attached and discussed in detail later in this Disclosure  
19 Statement. The following description of the Plan is intended as a summary only and is  
20 qualified in its entirety by reference to the Plan. Debtors urge each holder of a Claim to  
21 carefully review the entire Plan, together with this Disclosure Statement, before voting on the  
22 Plan.

### 23 **1. General**

24 Generally, the Plan provides that (a) Debtors will operate in the ordinary course and  
25 pay and satisfy their obligations from revenue generated by operations; and (b) Debtors shall  
26 seek to prevail on the appeal in the Class Action Case so they may pay all Creditors in full



1 over time; or (c) if Debtors are unable to prevail, or at least substantially prevail on the  
2 appeal, (i) B. & J. ~~will~~ & J. will pursue its malpractice claim against Saalfeld Griggs and if  
3 insufficient funds are recovered, B. & J. will then seek to refinance or sell the Real Property  
4 and liquidate its assets, with the Net Proceeds to be distributed pro rata to Unsecured  
5 Creditors; and (ii) Berman will distribute to unsecured creditors all the projected disposable  
6 income he believes he will receive during the five-year period after the Effective Date.

## 7 2. Secured Creditors

8 Reorganized B. & J.'s secured Creditor, Columbia Credit Union ("Columbia"), will  
9 be paid the full amount of its Allowed Secured Claim in accordance with the existing terms  
10 of its loan to B. & J., except as modified under the Plan with respect to certain loan terms and  
11 covenants set forth in the Plan. The payments to Columbia will be approximately \$14,080  
12 per month.

13 Reorganized Berman's secured Creditor, Quicken Loans, Inc. ("Quicken Loans"),  
14 will be paid the full amount of its Allowed Secured Claim in accordance with the existing  
15 terms of its loan to Berman. Berman's payments to Quicken Loans will be approximately  
16 \$2,852 per month.

## 17 3. General Unsecured Creditors

18 ~~Reorganized B.~~ If B. & J. prevails on the appeal of the Class Action Case, B. & J.'s  
19 General Unsecured Creditors will be paid in full, together with interest at the federal  
20 judgment rate in effect on the Effective Date, ~~from and after the Effective Date, as follows:~~  
21 Commencing. If B. & J. does not prevail on the first-day appeal of the first month following  
22 the Effective Date, Class Action Case, and there are insufficient funds from a refinancing or  
23 liquidation of the malpractice claims, then General Unsecured Creditors will be paid ~~interest~~  
24 only for pro rata from the sale and liquidation of B. & J.'s assets on a pro rata basis with the  
25 ~~first 12 payments, then the full balance of their claims in equal amortizing monthly~~  
26

1 ~~payments, including principal and interest at the federal judgment rate, for the next~~  
2 ~~36 months~~ Class Action Claims.

3 To the extent not paid by B. & J., Reorganized Berman's General Unsecured  
4 Creditors and Class Action Creditors (discussed below) shall be paid their pro rata share of  
5 \$60,000, which is Berman's projected disposable income for the five-year period following  
6 the Effective Date. See **Exhibit 3**, attached hereto.

#### 7 **4. Class Action Creditors**

8 Certain Creditors in the Marion County Case (the "Class Action Claims") were  
9 awarded a General Judgment in the total amount of \$4,864,951 against Debtors on  
10 October 31, 2018, which Debtors have appealed. ~~If the Class~~ If the Class Action Claims are  
11 denied on appeal, they will receive nothing. If the Class Action Claims are allowed and  
12 prevail on appeal, then such Allowed Claims will be paid in full if B. & J. has sufficient  
13 funds to do so once the appeals have concluded, or B. & J. will liquidate its assets and pay  
14 the Class ~~Action Creditors pro rata from the Net Proceeds of the liquidation. If Class~~ Action  
15 Creditors from available funds. B. & J. plans to file an adversary proceeding under 11  
16 USC § 547 avoiding the judgment lien obtained by the Class Action Claimants as a  
17 bankruptcy preference. If the B. & J. preference claim is successful, the Class Action Claims  
18 will be Unsecured Claims even if Allowed. If the preference claim is not successful and the  
19 Class Action plaintiffs prevail on the appeal, they would have a Secured Claim against the  
20 Real Property up to the value of the Real Property in excess of prior liens. If Class Action  
21 Claims are paid in full and entitled to interest, they shall receive interest at the federal  
22 judgment rate. To the extent the Allowed Class Action Creditors are not paid in full by  
23 B. & J., they shall receive payment from Berman in the amount of their pro rata share of  
24 \$60,000.

1                   **5.       Equity Interests**

2           The Plan provides that existing equity interests in B. & J. will be left in place unless  
3 the Company is liquidated, in which case equity will be extinguished.

4           The Plan provides that Berman will retain his interests in assets of his bankruptcy  
5 estate.

6                   **6.       Leases and Executory Contracts**

7           All unexpired leases and executory contracts will be assumed by the respective  
8 Debtors through the Plan unless such unexpired leases and executory contracts have  
9 previously been assumed and assigned or rejected, or a motion seeking their assumption or  
10 rejection has been filed before the Confirmation Date.

11                   **7.       Effective Date**

12           The Effective Date of the Plan shall be the 11th day following entry of the  
13 Confirmation Order.

14                   **8.       Cramdown Election**

15           In the event any Class does not accept the Plan, Debtors reserve the right to request  
16 that the Bankruptcy Court confirm the Plan in accordance with Section 1129(b) of the  
17 Bankruptcy Code or otherwise modify the Plan.

18                   **C.       BRIEF EXPLANATION OF CHAPTER 11**

19           Chapter 11 is the principal reorganization provision of the Bankruptcy Code.  
20 Pursuant to Chapter 11, a debtor attempts to reorganize its business for the benefit of the  
21 debtor, its creditors, and other parties-in-interest.

22           The formulation and confirmation of a plan of reorganization is the principal purpose  
23 of a Chapter 11 case. A plan of reorganization sets forth the method for compensating the  
24 holders of claims and interests in Debtor. If the plan is confirmed by the Bankruptcy Court,  
25 it will be binding on Debtors, their creditors, and all other parties-in-interest. A claim or  
26 interest is impaired under a plan of reorganization if the plan provides that the legal,

1 equitable, or contractual rights of the holder of such claim or interest are altered. A holder of  
2 an impaired claim or interest is entitled to vote to accept or reject the plan. Chapter 11 does  
3 not require all holders of claims and interests to vote in favor of a plan in order for the  
4 Bankruptcy Court to confirm it. However, the Bankruptcy Court must find that the plan  
5 meets a number of statutory tests before it may approve the plan. These tests are designed to  
6 protect the interests of holders of claims or interests who do not vote to accept the plan, but  
7 who will nonetheless be bound by the plan's provisions if it is confirmed by the Bankruptcy  
8 Court.

9 An Unsecured Creditors' Committee was not appointed by the U.S. Trustee's office  
10 in this case pursuant to 11 U.S.C. §§ 1102(a) and (b).

## 11 **II. VOTING PROCEDURES AND CONFIRMATION OF PLAN**

### 12 **A. BALLOTS AND VOTING DEADLINE**

13 A ballot to be used for voting to accept or reject the Plan is enclosed with each copy  
14 of this Disclosure Statement. After carefully reviewing this Disclosure Statement and its  
15 exhibits, including the Plan, please indicate your acceptance or rejection of the Plan by  
16 voting in favor or against the Plan on the enclosed ballot as directed below.

17 The Bankruptcy Court has directed that, to be counted for voting purposes, ballots for  
18 the acceptance or rejection of the Plan must be received by Debtors no later than 4:00 p.m.  
19 Pacific time on \_\_\_\_\_, 2019 at the following address:

20 Tonkon Torp LLP  
21 Attention: Spencer Fisher  
22 1600 Pioneer Tower  
23 888 SW Fifth Avenue  
24 Portland, OR 97204-2099

25 or via facsimile transmission to Spencer Fisher at (503) 972-3867.

26 Holders of each Claim scheduled by Debtors or with respect to which a Proof of  
Claim has been filed will receive ballots and are permitted to vote based on the amount of the  
Proof of Claim, except as discussed below. If no Proof of Claim has been filed, then the vote

1 will be based on the amount scheduled by Debtors in their Schedules. The Bankruptcy Code  
2 provides that such votes will be counted unless the Claim has been disputed, disallowed,  
3 disqualified, or suspended prior to computation of the vote on the Plan. A Claim to which an  
4 objection has been filed is not allowed to vote unless and until the Bankruptcy Court rules on  
5 the objection. Holders of disputed Claims who have settled their dispute with Debtors are  
6 entitled to vote the settled amount of their Claim. The Bankruptcy Code and rules provide  
7 that the Bankruptcy Court may, if timely requested to do so by the holder of such Claim,  
8 estimate or temporarily allow a disputed Claim for the purposes of voting on the Plan.

9 If a person holds Claims in more than one Class entitled to vote on the Plan, such  
10 person will be entitled to complete and return a ballot for each Class. If you do not receive a  
11 ballot or if a ballot is damaged or lost, please contact:

12 Tonkon Torp LLP  
13 Attention: Spencer Fisher  
14 1600 Pioneer Tower  
15 888 SW Fifth Avenue  
Portland, OR 97204-2099  
Telephone: (503) 802-2167

16 All persons entitled to vote on the Plan may cast their vote for or against the Plan by  
17 completing, dating, and signing the enclosed ballot and returning it, by First Class mail or  
18 hand delivery, to Debtors at the address indicated above. In order to be counted, all ballots  
19 must be executed and received at the above address no later than 4:00 p.m. Pacific time on  
20 \_\_\_\_\_, 2019. Any ballots received after 4:00 p.m. Pacific time on  
21 \_\_\_\_\_, 2019 will not be included in any calculation to determine whether the  
22 parties entitled to vote on the Plan have voted to accept or reject the Plan.

23 Ballots may also be received by Debtors by facsimile transmission to Tonkon Torp  
24 LLP, Attention: Spencer Fisher, at (503) 972-3867. Ballots sent by facsimile transmission  
25 will be counted if faxed to Mr. Fisher and received by 4:00 p.m. Pacific time on  
26 \_\_\_\_\_, 2019.

1 When a ballot is signed and returned without further instruction regarding acceptance  
2 or rejection of the Plan, the signed ballot shall be counted as a vote accepting the Plan. When  
3 a ballot is returned indicating acceptance or rejection of the Plan but is unsigned, the  
4 unsigned ballot will not be included in any calculation to determine whether parties entitled  
5 to vote on the Plan have voted to accept or reject the Plan. When a ballot is returned without  
6 indicating the amount of the Claim or an amount different from a timely filed Proof of Claim,  
7 then the amount shall be as set forth on Debtor's Schedules or any timely Proof of Claim  
8 filed with respect to such Claim or Order of the Bankruptcy Court.

9 **B. PARTIES ENTITLED TO VOTE**

10 Pursuant to Section 1126 of the Bankruptcy Code, each Class of impaired Claims or  
11 Equity Security Holders that is not deemed to reject the Plan is entitled to vote to accept or  
12 reject the Plan. Any holder of an Allowed Claim that is in an impaired Class under the Plan,  
13 and whose Class is not deemed to reject the Plan, is entitled to vote. A Class is "impaired"  
14 unless the legal, equitable, and contractual rights of the holders of Claims in that Class are  
15 left unaltered by the Plan or if the Plan reinstates the Claims held by members of such  
16 Class by (4*i*) curing any defaults; (2*ii*) reinstating the maturity of such Claim;  
17 (3*iii*) compensating the holder of such Claim for damages that result from the reasonable  
18 reliance on any contractual provision or law that allows acceleration of such Claim; and  
19 (4*iv*) otherwise leaving unaltered any legal, equitable, or contractual right of which the Claim  
20 entitles the holder of such Claim. Because of their favorable treatment, Classes that are not  
21 impaired are conclusively presumed to accept the Plan. Accordingly, it is not necessary to  
22 solicit votes from the holders of Claims in Classes that are not impaired. Classes of Claims  
23 or Interests that will not receive or retain any money or property under a Plan on account of  
24 such Claims or Interests are deemed, as a matter of law under Section 1126(g) of the  
25 Bankruptcy Code, to have rejected the Plan and are likewise not entitled to vote on the Plan.  
26 All Classes of Claims are impaired under Debtors' Plan.

1                   **C.       VOTES REQUIRED FOR CLASS ACCEPTANCE OF THE PLAN**

2                   As a condition to confirmation, the Bankruptcy Code requires that each impaired  
3                   Class of Claims or Interests accept the Plan, subject to the exceptions described below in the  
4                   section entitled “Cramdown of the Plan.” In a “Cramdown,” at least one impaired Class of  
5                   Claims must accept the Plan in order for the Plan to be confirmed.

6                   For a Class of Claims to accept the Plan, Section 1126 of the Bankruptcy Code  
7                   requires acceptance by Creditors that hold at least two-thirds in dollar amount and a majority  
8                   in number of the Allowed Claims of such Class, in both cases counting only those Claims  
9                   actually voting to accept or reject the Plan. The holders of Claims who fail to vote are not  
10                  counted as either accepting or rejecting the Plan. If the Plan is confirmed, the Plan will be  
11                  binding with respect to all holders of Claims and Interests in each Class, including Classes  
12                  and members of Classes that did not vote or that voted to reject the Plan.

13                   **D.       “CRAMDOWN” OF THE PLAN**

14                  If the Plan is not accepted by all of the impaired Classes of Claims and Interests of  
15                  Debtors, the Plan may still be confirmed by the Bankruptcy Court pursuant to  
16                  Section 1129(b) of the Bankruptcy Code’s “Cramdown” provision if the Plan has been  
17                  accepted by at least one Impaired Class of Claims, without counting the acceptances of any  
18                  Insiders of Debtor, and the Bankruptcy Court determines, among other things, that the Plan  
19                  “does not discriminate unfairly” and is “fair and equitable” with respect to each  
20                  non-accepting Impaired Class of Claims or Interests. Debtors believe the Plan can be  
21                  confirmed even if it is not accepted by all impaired Classes of Claims and hereby request the  
22                  Bankruptcy Court to confirm the Plan in accordance with Section 1129(6) of the Bankruptcy  
23                  Code or otherwise modify the Plan in the event any Class of Creditors does not accept the  
24                  Plan.

1                   **E.       CONFIRMATION HEARING**

2           The Bankruptcy Court has scheduled a hearing on confirmation of the Plan to  
3 commence on \_\_\_\_\_, 2019, at \_\_\_ a.m. Pacific time. The confirmation hearing  
4 will be held at the U.S. Bankruptcy Court for the District of Oregon, Courtroom \_\_\_\_\_, 1050  
5 SW Sixth Avenue,, Portland, Oregon, before the Honorable \_\_\_\_\_, United  
6 States Bankruptcy Judge. At the hearing, the Bankruptcy Court will consider whether the  
7 Plan satisfies the various requirements of the Bankruptcy Code, including whether it is  
8 feasible and whether it is in the best interests of the Creditors of Debtors. Prior to the  
9 hearing, Debtors will submit a report to the Bankruptcy Court concerning the votes for  
10 acceptance or rejection of the Plan by the persons entitled to vote thereon.

11           Section 1128(b) of the Bankruptcy Code provides that any party-in-interest may  
12 object to confirmation of the Plan. Any objections to confirmation of the Plan must be made  
13 in writing and filed with the Bankruptcy Court and received by counsel for Debtors no later  
14 than 4:00 p.m. Pacific time on \_\_\_\_\_, 2019. Unless an objection to confirmation  
15 is timely filed and received, it will not be considered by the Bankruptcy Court.

16           **III.     COMPANY BACKGROUND AND GENERAL INFORMATION**

17                   **A.       DEBTORS**

18           B. & J. is an Oregon corporation authorized to transact business in various  
19 jurisdictions, including the State of Oregon, and is headquartered in Oregon.

20           B. & J. is the owner of real estate located at 4490 Silverton Road, N.E., Salem,  
21 Oregon ("Premises"). On the Petition Date, the Premises were leased to Better Business  
22 Management ("BBM"). BBM owned and operated an RV park and self-storage unit business  
23 on the Premises entitled Salem RV park and Storage. The Premises consist of a 158-unit  
24 RV park and a 243-Unit, 29,750-square-foot (net rentable area) self-storage facility on a  
25 9.06-acre parcel. A 6,758-square-foot general purpose building that includes an office,  
26 laundry facilities, restrooms with showers, and a recreation room is located on the Premises.



1 The building also includes 17 upstairs storage units that have been included in the total count  
2 and rentable area.

3 Berman is an individual residing in the State of Oregon, and is the President and 50%  
4 shareholder of B. & J.

5 **B. DEBTORS' BUSINESS**

6 Prior to the Petition Date, B. & J. historically engaged in the real estate investment  
7 and development business. B. & J. was formed in the early 1990s and developed various  
8 projects, including the real property at 4490 Silverton Road. As part of its business plan to  
9 develop other properties and not operate an RV park, B. & J. entered into a Commercial  
10 Lease on or about January 30, 1997, leasing the Premises to BBM, which lease had been  
11 subsequently amended and extended at various times up to the Petition Date (collectively, the  
12 "BBM Lease"). Under the BBM Lease, BBM owned, operated, and maintained the RV park  
13 and self-storage facility and made lease payments to B. & J. When the Marion County  
14 Circuit Court entered a General Judgment against B. & J., BBM, and Berman on October 31,  
15 2018 (see "Marion County Litigation" below), BBM became insolvent and unable to  
16 continue performance and was, therefore, in breach of the Lease. On the Petition Date,  
17 B. & J. sought Court authority to reject the BBM Lease and to change its business model to  
18 start operating an RV park and self-storage unit business. (See B. & J.'s Motion to Reject  
19 Commercial Lease and Authorize Use and Operation of Property as RV park and Self-  
20 Storage Facility [ECF No. 7]. The Court granted Debtor's motion on February 13, 2019  
21 [ECF No. 104].<sup>1</sup>

22 Prior to filing the Bankruptcy Cases, Berman's principal business was operating  
23 B. & J. and BBM, and other real estate-centered entities. Berman intends to continue  
24

25 <sup>1</sup> Unless otherwise specified, all references to docket entry numbers refer to B. & J.'s case,  
26 Bankruptcy Case No. 19-60138-pcm11.

1 operating B. & J. under its new business model, and also intends to operate the other business  
2 entities in which he has been involved in the past.

3 **C. MANAGEMENT OF B. & J.**

4 B. & J. is an Oregon corporation owned 50% by William J. Berman and 50% by  
5 Debra Lynn Berman. Mr. Berman is the president of Debtor and Ms. Berman is the  
6 secretary. Together they have over 25 years of real estate development and investment  
7 experience and 26 years of experience in the RV park and storage rental business.  
8 Reorganized B. & J. will consist of the same owners and management as currently exists.  
9 Although B. & J. employs additional employees to maintain and repair its property in the  
10 ordinary course, Mr. and Ms. Berman perform much of the maintenance and repairs  
11 themselves, in addition to their management duties, saving B. & J. considerable expense and  
12 enhancing the value of B. & J.'s property. All B. & J. employees are at-will employees.  
13 There are no retiree benefits to be paid by Reorganized Debtor employees.

14 **D. MARION COUNTY LITIGATION**

15 On or about April 12, 2013, Loren Hathaway, on behalf of himself and all others  
16 similarly situated within the State of Oregon, et. al, commenced a class action case against  
17 Debtor, BBM, and Berman in the Circuit Court for the State of Oregon for the County of  
18 Marion as Case No. 13C14321 ("Marion County Case"). Plaintiffs in the Marion County  
19 Case asserted claims for relief based on the manner in which BBM charged utility services to  
20 tenants at the RV park and later for rent retaliation. Plaintiffs obtained an order against  
21 BBM, the owner and operator of the Salem RV park, for approximately \$4 million dollars for  
22 improper utility charges. The court entered a judgment against BBM in spite of the fact that  
23 the RV park never made any money on the utility charges. The liability was based on a  
24 statutory construction of how kilowatt hours were charged to tenants and for charging a fixed  
25 meter fee.  
26

1 The fact that the tenants actually paid less for the utility services (at the commercial  
2 rate) than they would have paid had they been charged the full residential utility rate was  
3 deemed immaterial. The court imposed damages equal to two times the tenants' monthly  
4 rental rate for each month of the tenant's occupancy. When BBM tried to adjust its rates in a  
5 revenue neutral manner to comport with the court's ruling, plaintiffs' demand, and in  
6 accordance with the advice of its counsel, Saalfeld Griggs, BBM was then hit with a  
7 retaliation claim for which it was also found liable in the sum of approximately \$1 million.  
8 Once plaintiffs obtained liability against BBM, plaintiffs sought to impose liability on B. & J.  
9 as the owner of the property, and against Berman individually under piercing theories. The  
10 state court ruled that Berman and B. & J. were also liable for all of the damages owed by  
11 BBM. The court entered a General Judgment against B. & J., BBM, and Berman on  
12 October 31, 2018, in the sum of \$3,900,501 on the electrical charge claims to the Main  
13 Class members, plus \$964,450 to the Retaliation Sub-Class members. Plaintiffs have  
14 submitted their claim for attorneys' fees and costs to the Court pursuant to ORCP 68. The  
15 Court has issued an opinion granting Plaintiffs' attorneys' fees, but further proceedings are  
16 necessary to determine the final amount, and for entry of an order and judgment. Defendants  
17 BBM, Berman, and B. & J. have filed an appeal of the initial judgment and will appeal the  
18 attorney fees award. Debtors expect to prevail, or at least substantially prevail, on appeal.

19 **E. ELECTRICAL BILLING AT THE RV PARK**

20 Salem R.V. Park was planned and developed by Eugene Jones (Ms. Berman's father)  
21 and was opened in 1991. During planning and development of the park, Mr. Jones met and  
22 coordinated with the various municipalities and utilities. Mr. Jones met with Portland  
23 General Electric to design an electric grid for the park's 124, and later 158, individually-  
24 metered sites, and to provide guidance as to an electrical billing system that was legal and  
25 equitable. Despite Mr. Jones' desire to have a residential electrical meter at each and every  
26

1 individual site (providing an exact kilowatt usage and billing per site), PGE determined that  
2 only 16 PGE commercial meters would be installed on the property.

3 This forced the park operator to act as a middleman for electrical billing by making  
4 them the responsible party for determining the gross power consumption of each individual  
5 tenant. In the spirit of fairness, Mr. Jones placed a sub-meter at each of the sites, which  
6 allowed the park to accurately allocate power consumption to the individual sites and ensured  
7 that low power users would not subsidize high power users and that enabled all tenants to  
8 benefit from the much lower commercial rates.

9 With further guidance from PGE, this system of allocating power to each individual  
10 tenant site through a monthly sub-meter reading by the park operator was established and  
11 implemented with the understanding that while the park operator could not make a profit on  
12 electrical billing, it could charge a basic fee, or meter fee, not to exceed the basic charge  
13 billed by PGE. The billing system thus implemented charged a fixed KWH charge  
14 (commercial rates constantly fluctuate based on usage) and a meter fee of five dollars (at a  
15 time when PGE's meter fee was seven). This arrangement caused BBM to lose roughly four  
16 thousand dollars annually on electrical billing, effectively subsidizing its tenants' electrical  
17 costs.

18 In 1993, Berman began to manage the Park alongside Mr. Jones, with the electric  
19 billing systems Mr. Jones developed. When BBM took over park operations, Berman (as an  
20 officer of BBM) audited all business practices, including electrical billing, and confirmed  
21 that the electrical billing practices, calculations, and allocation of the 16 PGE meters to the  
22 individual sites was proper and legal according to the parameters of several governing  
23 agencies, including the Public Utility Commission, Oregon Housing and Community  
24 Services (aka Oregon MultiFamily), and PGE. BBM, therefore, continued operation of the  
25 RV park with the electrical billing practices originally implemented by Mr. Jones.  
26

1 Over the follow 20 years, these billing practices were reconfirmed several times to  
2 ensure that laws were being followed, including when all Oregon RV parks came under  
3 landlord-tenant law, and after the Marion County lawsuit was filed. Every audit during these  
4 20-plus years of operation, and all government agencies (the Public Utility Commission,  
5 Oregon Housing and Community Services, and PGE) confirmed that BBM's electrical billing  
6 system was best practice and legal. To this day, neither BBM nor either of Debtors have ever  
7 made a dollar in profit from this electrical billing arrangement for tenants, a fact not disputed  
8 by plaintiff's counsel in the Marion County Case, who stated in open court that "we have no  
9 reason to believe Salem RV park has ever made money on utilities."

10 Despite the fact that only the word "Cost" and never the term "kWh" is used in  
11 ORTLA, and most importantly, despite the fact that no tenant has ever paid more than what  
12 PGE would have billed them individually, the Marion County Court ruled that because of  
13 BBM's kilowatt hour charging structure, BBM was in violation of the law.

14 On July 29, 2013, under the advice of its legal counsel, Saalfeld Griggs PC, BBM  
15 implemented changes to its electrical billing practices in an effort to mitigate damages by  
16 complying with the demands of the lawsuit. BBM implemented the following billing  
17 changes: (1) the meter fee was removed, (2) the kWh charge was reduced and now varies  
18 monthly, and (3) rents were raised \$20. These changes resulted in little to no increased gross  
19 revenue, but a gross loss on electrical billings of roughly \$15,000 annually. Rents were  
20 raised to partially offset some of these losses and because rents had not been raised at the  
21 RV park for a long time. However, as a result of the changes, plaintiffs amended the  
22 complaint and successfully sued the defendants for rent retaliation.

#### 23 **IV. EVENTS LEADING TO THE BANKRUPTCY FILING**

24 Debtors' bankruptcy filings were precipitated by the general judgment entered in the  
25 Marion County Case and by the accumulated financial losses related thereto. Debtors have  
26

1 insufficient funds with which to pay the judgment and attorney fees for both plaintiffs and  
2 itself. As a result, Debtors filed for Chapter 11 bankruptcy.

3 **V. SIGNIFICANT POST-PETITION EVENTS**

4 **A. CASH COLLATERAL**

5 Early in the case, B. & J. obtained consent from Columbia Credit Union and court  
6 approval to use cash collateral to pay ongoing Chapter 11 expenses. The Court entered an  
7 Order Authorizing the Use of Cash Collateral and Granting Adequate Protection on  
8 February 6, 2019 [ECF No. 96].

9 **B. REJECTION OF COMMERCIAL LEASE**

10 Upon filing the Chapter 11, B. & J. also obtained court approval to reject the  
11 Commercial Lease between B. & J. and BBM, and to authorize B. & J. to operate the  
12 property as an RV park and self-storage facility in the ordinary course of its business during  
13 this bankruptcy proceeding, as more fully described above (“B. & J.’s Business”). A detailed  
14 description of the rejected lease can be found at ECF No. 7 or by contacting counsel for  
15 B. & J.

16 Consistent with rent restrictions imposed by an as-then-impending Oregon law, which  
17 has now been enacted, B. & J. instituted a rent structure that would start to bring rental rates  
18 in line with current market rents while at the same time not increasing rents too much from  
19 the prior owner. B. & J. is also investing to make improvements and repairs to create a  
20 desirable park and storage operation. After court approval, B. & J. hired employees and  
21 commenced operations as the RV park and self-storage business entitled Salem Estates RV  
22 Park and Salem Estates Storage.

23 **C. RELIEF FROM STAY**

24 On or about May 15, 2019, B. & J. and Plaintiffs’ Class Action counsel entered into a  
25 Stipulated Order Granting Limited Relief From Stay [ECF No. 166] (“Relief From Stay  
26 Order”) whereby the parties agreed, and the Court ordered, that the state court proceeding

1 could continue to its completion at the trial level, and then continue on to resolve any and all  
2 subsequent appeals; provided, however, that any further rulings would not constitute a lien  
3 on any of the B. & J. property or assets, and any payment of any amounts ultimately ruled to  
4 be due and owing would be governed by the Plan of Reorganization.

5 On or about June 21, 2019, Berman and Plaintiffs' Class Action counsel entered into  
6 a Stipulated Order Granting Limited Relief From Stay [ECF No. 70 (Berman Case)]<sup>2</sup>  
7 ("Berman Relief From Stay Order") whereby the parties agreed and the Court ordered that  
8 the state court proceeding could continue to its completion at the trial level, and then  
9 continue on to resolve any and all subsequent appeals; provided, however, that any further  
10 rulings would not constitute a lien on any of Berman's property or assets, and any payment  
11 of any amounts ultimately ruled to be due and owing would be governed by the Plan of  
12 Reorganization. Additionally, the parties agreed that the Class Action Plaintiffs' judgment  
13 lien would be promptly avoided pursuant to 11 U.S.C. § 547.

#### 14 **D. EMPLOYMENT OF PROFESSIONALS**

15 B. & J. has retained Tonkon Torp LLP as its general counsel in this case. B. & J. also  
16 sought and obtained Bankruptcy Court approval for the employment of (a) Saalfeld Griggs  
17 PC as its special purpose counsel, and (b) Fischer, Hayes, Joye & Allen LLC as its  
18 accountants. B. & J. and Berman also ~~expects to seek~~ obtained an order authorizing the  
19 employment of Janet M. Schroer as special purpose counsel to represent them as appellate  
20 counsel for the Class Action Case ~~once such counsel is identified and retained.~~  
21 Ms. Schroer will be paid by the Oregon State Bar Professional Liability Fund as repair  
22 counsel based on the malpractice claim asserted against Saalfeld Griggs by Debtors.

23 Berman has retained Motschenbacher & Blattner LLP as its general counsel in the  
24 Berman Bankruptcy Case, and as appellate counsel in the Class Action Case. Berman also

25 <sup>2</sup> Reference to documents in the "Berman Case" refer to docket entries in Bankruptcy Case  
26 No. 19-60230-pcm11.

sought and obtained Bankruptcy Court approval for the employment of Fischer, Hayes, Joye & Allen LLC as his accountant. Berman may seek authority to employ alternate appellate counsel for the Class Action Case if appropriate.

## **VI. ASSETS AND LIABILITIES**

### **A. ASSETS**

#### **1. B. & J.'s Real Property**

As described above, B. & J.'s principal asset is the Real Property containing the 158-unit RV park and 243-unit self-storage facility on a 9.06-acre parcel both located at 4490 Silverton Road, N.E., Salem, Oregon. Debtors estimate that the value of the Real Property was approximately \$5,000,000 as of the B. & J. Petition Date.

As of the Petition Date, B. & J. held bare legal title to the Property and the RV Park and Storage business was operated by Better Business Management ("BBM"). BBM was in default under the lease with B. & J. and was insolvent as a result of the Class Action judgment entered against it. Thus, as of the Petition Date, B. & J. owned Property with an insolvent tenant that was in default. Such circumstances depressed the value of the Property. In addition, the Property had been underperforming given that BBM had been charging under-market rates. Further, the Property had significant amounts of deferred maintenance, which further depressed its value. Although a prior appraisal had valued the Property at one point at approximately \$6 million, B. & J.'s owner believes that appraisal was too high and given the present state of the Property as of the Petition Date, a \$5 million valuation was more accurate. In any event, the Property value is expected to increase under the Plan since B. & J. has taken possession of the Property and is now running an RV Park and Storage business that it expects will be able to generate sufficient revenue to make the needed repairs and improvements to increase the Property value during the life of the Plan. Moreover, if B. & J. is not able to generate sufficient funds to pay all Allowed Claims in full, then the



1 [Property will be liquidated. Upon liquidation, the value will be determined by the](#)  
2 [marketplace.](#)

3 **2. Berman's Real Property**

4 Berman co-owns, with his wife, real property and a single family home in Salem,  
5 Oregon. Legal title to the home is held by the Berman Living Trust Dated October 21, 1997.  
6 Berman estimates that the total value of the residence was approximately \$568,060 as of the  
7 Berman Petition Date. Therefore, Berman estimates that the value of his 50% interest in the  
8 residence was approximately \$284,030 as of the Berman Petition Date.

9 **3. Personal Property**

10 As of the Petition Date, B. & J.'s hard assets consisted of a 2017 Chevy suburban and  
11 a 2001 New Holland tractor, as well as some miscellaneous office furniture and equipment  
12 with little market value. B. & J. had cash accounts as of the Petition Date in the total amount  
13 of \$114,209.26, and also had a receivable from Berman in the amount of \$61,000. This  
14 original amount was reduced prepetition by \$29,730, when B. & J. acquired Mr. and  
15 Ms. Berman's debt and collateral rights against BBM and its assets. After the Court order  
16 rejecting B. & J.'s lease with BBM, B. & J. acquired the personal property of BBM in  
17 satisfaction of that lien. The value of this additional property acquired postpetition is  
18 \$29,730.

19 B. & J. has a receivable from William Lloyd Developments, Inc. in the total face  
20 amount of \$1,837,322, of which \$937,322 is a doubtful or uncollectable amount. This  
21 receivable is further subject to reduction based on a debt of \$350,164 owed by B. & J. to  
22 William Lloyd Developments, Inc. A list of all of B. & J.'s assets can be found at  
23 Schedule A/B [ECF No. 89]. [The collection of the full amount of the receivable from](#)  
24 [William Lloyd is doubtful since in the past 11 years William Lloyd has sold only one](#)  
25 [undeveloped lot. If payment were demanded immediately, the William Lloyd assets would](#)  
26

1 [need to be sold at depressed values resulting in a lower liquidation value and less funds to](#)  
2 [pay B. & J.](#)

3 As of the Berman Petition Date, Berman's hard assets consisted of miscellaneous  
4 household goods and furnishings Berman co-owns with his wife. Berman also had checking  
5 accounts worth \$35,937.53, and individual retirement accounts that Berman has claimed as  
6 fully exempt. Berman also owns stock or membership interests in the following entities:  
7 (a) 50% of the outstanding stock of B. & J., (b) 50% of the outstanding stock of BBM,  
8 (c) 28% of the outstanding stock of William Lloyd Investments, Inc., and (d) 20% of the  
9 outstanding membership interest in B. & J. Investments LLC. [Berman is also owed](#)  
10 [\\$107,690.33, including interest, in relation to a loan that he and his wife made to William](#)  
11 [Lloyd Investments, Inc.](#) A list of Berman's assets can be found in Berman's Amended  
12 Schedule A/B [ECF No. 44 (Berman Case)].

13 B. & J. is also owed reimbursement from BBM for legal fees (\$302,603.25 paid and  
14 \$293,354 unpaid) incurred in the Marion County Case and owed under an indemnity clause  
15 in BBM's Lease with B. & J. — B. & J. does not expect to collect this amount as BBM is  
16 now out of business and has no assets.

17 Debtors also have potential malpractice claims against Saalfeld Griggs LLP for legal  
18 advice that resulted in the Class Action retaliation liability claim of \$964,450, plus attorney  
19 fees to be awarded, and legal advice that resulted in disregard of corporate status that resulted  
20 in the class action judgment liability of \$4,864,951 (which includes the retaliation liability  
21 claim of \$964,450), plus attorney fees to be awarded. Debtors have made demand on  
22 Saalfeld Griggs for these claims and ~~is~~[are](#) negotiating a tolling agreement. Debtors dispute  
23 their liability to the Class Action Creditors but if such liability is upheld on appeal, Debtors  
24 believe they have valid claims against Saalfeld Griggs since Debtors relied upon and  
25 followed Saalfeld ~~Grigg's~~[Griggs'](#) advice in conducting its business in the manner in which  
26 the state court found to result in the retaliation liability and the successor liability of both

Debtors. Debtors intend to file an objection to Saalfeld Griggs' prepetition Claim and, as a result, expect that no payments will be made on that Claim pending the conclusion of the Class Action appeals and resolution of any malpractice claims against Saalfeld Griggs.

Berman may also have a claim against his minor grandchildren, for gifts made to those minors' college savings funds. Berman and his wife jointly contributed \$21,740.57, half of which was from Berman. As a result, Berman's potential claim equals \$10,870.29, which has been included in Berman's liquidation analysis attached as Exhibit 3.

## **B. LIABILITIES**

### **1. Columbia Credit Union**

According to the proof of claim filed by Columbia Credit Union, the amount of debt owing to Columbia Credit Union as of the Petition Date is \$2,225,037.38 in principal, plus accrued interest in the amount of \$918.05, and \$3,412.50 in prepetition attorney fees and costs. To secure its obligations, on September 11, 2015, B. & J. granted Columbia Credit Union a security interest in the Real Property located at 4490 Silverton Road NE, Salem, Oregon. Additionally, Berman executed and delivered a personal guaranty. A copy of Columbia Credit Union's Deed of Trust and the Berman Guaranty are attached to its Proof of Claim [Claim 3 (B. & J. Case)].

### **2. Marion County Case Claim**

A General Judgment was entered against Debtor, BBM, and Mr. Berman on October 31, 2018, in the sum of \$3,900,501 on the electrical charge claims to the Main Class members, plus \$964,450 to the Retaliation Sub-Class members. In addition, plaintiffs have requested attorney fees of \$1,100,000 and costs of \$52,378.39. Debtors expect they will prevail in the appeal of the Marion County Case, and that as a result all creditors except the Class Action Claim plaintiffs will be paid in full. If Debtors do not prevail in the appeal of the Marion County Case, B. & J. ~~may be forced to~~ will pursue the malpractice claims

1 against Saalfeld Griggs and if sufficient recovery is not made therefrom, will then liquidate  
2 its assets.

3 **3. Unsecured and Class Action Creditors**

4 The total amount of Unsecured Claims scheduled by B. & J. or filed by Creditors  
5 against B. & J. is approximately \$751,182.49 (excluding claims filed by the Class Action  
6 Creditors which were listed as disputed). The total filed claims against B. & J. is  
7 approximately \$7,845,738.24-including the Class Action Claims. This amount excludes any  
8 duplication for scheduled and filed claims and does not include anticipated costs and attorney  
9 fees to be awarded to the Class Action Plaintiffs in the Class Action Case.

10 The total amount of Unsecured Claims scheduled by Berman or filed by Creditors  
11 against Berman is approximately \$355,785.49 (excluding the Columbia Guaranty Claim,  
12 which is to be paid by B. & J., and claims filed by the Class Action Creditors which were  
13 listed as disputed). The total amount of filed claims against Berman is approximately  
14 \$7,763,541.53. This amount excludes any duplication for scheduled and filed claims.

15 **VII. DESCRIPTION OF PLAN**

16 **A. BRIEF EXPLANATION OF CHAPTER 11**

17 Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code.  
18 Under Chapter 11, a debtor is authorized to reorganize its business for the benefit of itself, its  
19 creditors, and its equity holders. Confirmation of a plan of reorganization is the principal  
20 objective of a Chapter 11 reorganization case. A plan of reorganization sets forth the means  
21 for satisfying claims against, and interests in, a debtor. Confirmation of a plan of  
22 reorganization by a bankruptcy court makes the plan binding upon the debtor, any issuer of  
23 securities under the plan, any person acquiring property under the plan, and any creditor and  
24 any equity holder of the debtor. Subject to certain limited exceptions provided by the  
25 Bankruptcy Code, and except as specifically provided in the Plan of Reorganization, the  
26

confirmation order discharges debtor from any debt that arose prior to the date of such confirmation and order and substitutes therefore the obligations specified in the plan.

## **B. SOLICITATION, CLASSIFICATION, AND TREATMENT OF CLAIMS AND EQUITY SECURITIES**

### **1. General**

Pursuant to Section 1123(a)(1) of the Bankruptcy Code, a Plan of Reorganization must designate classes of Claims and classes of Interests. The Plan classifies all Claims and Interests into four classes. The classification of Claims and Interests is made for the purpose of voting on the Plan and making distributions thereunder, and for ease of administration of the Plan. A Claim or Interest is classified in a particular Class only to the extent the Claim or Interest qualifies within the description of that Class, and is classified in a different Class to the extent the Claim or Interest qualifies within the description of such different Class. A Claim or Interest is entitled to vote in a particular Class and to receive distributions in such Class only to the extent such Claim or Interest is an Allowed Claim or Allowed Interest in that Class and has not been paid prior to the Effective Date. Under the Plan, a Claim or Interest is an Allowed Claim against, or an Allowed Interest in, Debtor to the extent that (a) a proof of the Claim or Interest was (1) timely filed, or (2) deemed filed under applicable law by reason of an order of the Bankruptcy Court; or (b) scheduled by Debtor on its Schedules of Liabilities as neither contingent, unliquidated, or disputed; and (c) (i) no party-in-interest has filed an objection within the time fixed by the Bankruptcy Court, (ii) the Claim or Interest is allowed by Final Order; or (iii) with respect to an application for compensation or reimbursement of an Administrative Expense Claim, the amount of the Administrative Expense Claim has been approved by the Bankruptcy Court.

### **2. Unclassified Claims**

Administrative Expense Claims and Priority Tax Claims are not classified. An Administrative Expense Claim is a Claim against Debtors constituting an expense of

1 administration of the Bankruptcy Case allowed under Section 503(b) of the Bankruptcy Code  
2 including, without limitation, the actual and necessary costs and expenses of preserving the  
3 estate and operating Debtors' business during the Bankruptcy Case; claims for the value of  
4 goods received by Debtors within 20 days before the Petition Date sold in the ordinary  
5 course of business; any indebtedness or obligations incurred by Debtors during the pendency  
6 of the Bankruptcy Case in connection with the provision of goods or services to Debtors;  
7 compensation for legal and other professional services and reimbursement of expenses; and  
8 statutory fees payable to the U.S. Trustee.

9 A "Priority Tax Claim" is a Claim of a governmental unit of the kind entitled to  
10 priority under Section 507(a)(8) of the Bankruptcy Code or that would otherwise be entitled  
11 to priority but for the Secured status of the Claim. Each holder of an Allowed Priority Tax  
12 Claim shall be paid by Reorganized Debtors within 30 days following the Effective Date or  
13 the date the Claim is Allowed, whichever is sooner, the full amount of its Allowed Priority  
14 Tax Claim as allowed by 11 U.S.C. § 1129(a)(9)(C) and (D). The IRS has filed a Priority  
15 Tax Claim against B. & J. in the amount of \$336.82, and against Berman in the amount of  
16 \$100.

17 Pursuant to the Plan of Reorganization, Administrative Expense Claims will be paid  
18 in full on the later of the Effective Date or the date on which any such Administrative  
19 Expense Claim becomes an Allowed Claim unless such holder shall agree to a different  
20 treatment of such Claim (including, without limitation, any different treatment that may be  
21 provided for in any documentation, statute, or regulation governing such Claim). However,  
22 the Administrative Expense Claims representing liabilities incurred in the ordinary course of  
23 business (including amounts owed to vendors and suppliers that have sold goods or furnished  
24 services to Debtors after the Petition Date), if any, will be paid in accordance with the terms  
25 and conditions of the particular transactions and any other agreements relating thereto.  
26

Debtor will include the estimated amount of such expenses in the Report of Administrative Expense Claims to be filed prior to the hearing on confirmation.

### 3. Classified Claims

The following summary of distributions under the Plan to Classified Claims does not purport to be complete and is subject to, and is qualified in its entirety by reference to, the Plan included herewith.

(a) Class 1 (Columbia Credit Union's Secured Claim Against B. & J.). Columbia Credit Union ("Columbia") has a first-position security interest in B. & J.'s real property located at 4490 Silverton Road NE, Salem, Oregon, to secure its Allowed Secured Claim. Columbia will retain its interest in its Collateral with the same priority that it had on the Petition Date. Columbia will be paid the full amount of its Allowed Secured Claim in accordance with the existing terms of its loan to Debtor except for the changes to terms and covenants as detailed in the Plan. The payments to Columbia from B. & J. will be approximately \$14,080 per month.

(b) Class 2 (Columbia's Unsecured Guaranty Claim Against Berman). Columbia has an unsecured claim against Berman pursuant to his personal guaranty of B. & J.'s debt to Columbia. Berman will remain liable to Columbia under the personal guaranty in accordance with the existing terms of Columbia's loan to B. & J. except for the changes to terms and covenants as detailed in the Plan.

(c) Class 3 (Quicken Loans' Secured Claim Against Berman). Quicken Loans, Inc. ("Quicken Loans") has a first-position security interest in Berman's personal residence in Salem, Oregon, to secure its Allowed Secured Claim. The Class 3 claim is unimpaired and not entitled to vote on the Plan. Quicken Loans will be paid the full amount of its Allowed Secured Claim in accordance with the existing terms of its loan to Berman.

1 (d) Class 4 (General Unsecured Claims Against B. & J.). Each  
2 ~~General~~Class 4 Unsecured Claim against B. & J. will be paid in full, together with interest at  
3 the federal judgment rate in effect on the Effective Date, from and after the Effective Date, as  
4 follows: (i) commencing on the first day of the first full month following the Effective Date,  
5 General Unsecured Creditors will be paid monthly payments of interest only, at the federal  
6 judgment rate, for ~~12-24~~ months; and (ii) commencing on the first day of the ~~13th~~25th month  
7 following the Effective Date, General Unsecured Creditors will be paid the full balance of  
8 their claims in equal amortizing monthly payments, including principal and interest at the  
9 federal judgment rate, for the next 36~~-months~~ months; provided, however, that if the appeal  
10 of the Class Action Case is not successful and funds are due and owing to the Class 6  
11 Claimants under a Final Order, then payments made to Class 4 Claims up to that point will be  
12 recharacterized as payments of principal only and Class 4 Claims shall share pro rata in the  
13 liquidation of assets described in Class 6 below on a pari passu basis with Class 6 Unsecured  
14 Claims, with no further payments being made to Class 4 Claims until such time as payments  
15 to Class 6 Unsecured Claims have caught up and are on par with the percentage previously  
16 received by Class 4 Claims.

17 (e) Class 5 (General Unsecured Claims Against Berman). Each  
18 General Unsecured Claim against Berman will be paid first from B. & J. under Class 4, and  
19 any balance remaining shall be paid its pro rata share of funds held in the “Berman  
20 Unsecured Claims Fund,” which shall be created and funded by Berman from his earnings  
21 after the Effective Date. The amount to be paid by Berman into the Berman Unsecured  
22 Claims Fund is \$1,000 per month for five years, or until \$60,000 has been deposited by  
23 Berman, or such other amount as is required by the Bankruptcy Court. The Class 5 creditors’  
24 pro rata share of the Berman Unsecured Claims Fund shall be calculated from the total  
25 amount of Class 5 and Class 7 claims.  
26



1 (f) Class 6 (Class Action Claims Against B. & J.). Each holder of  
2 an Allowed Claim as a result of a Final Order entered in the Class Action Litigation and  
3 appeals will be paid the full amount ultimately awarded by the Court, if any, if B & J. has  
4 sufficient assets to make such payments and, if not, from the pro rata Net Proceeds from the  
5 closing down/liquidation and sale of B. & J.'s business and assets~~-,~~ as follows:

6 Upon entry of a Final Order on the Class Action Claims, Reorganized B. & J.  
7 will pay Allowed Class Action Claims, whether Secured or Unsecured, within  
8 12 months after any order entered in the Class Action Case becomes a Final  
9 Order. To the Extent Reorganized B. & J. does not have sufficient funds to  
10 pay the Allowed Class 6 Claims from available cash, then Reorganized  
11 B. & J. shall first seek to pursue the malpractice claims against Saalfeld  
12 Griggs in order to recover the full amounts owing to the Class Action Claims.  
13 If recovery against Saalfeld Griggs is not successful, then Reorganized B. & J.  
14 will seek to refinance the Real Property to generate Net Proceeds in a  
15 sufficient amount to pay the Allowed Class 6 Claims. If Reorganized B. & J.  
16 is unable to refinance the Real Property, then Reorganized B. & J. shall  
17 proceed to sell the Real Property and liquidate all its remaining assets, with  
18 the Net Proceeds from the Real Property to be paid first in full satisfaction of  
19 the Allowed Class 6 Secured Claims and thereafter to the Allowed Class 4 and  
20 Class 6 Unsecured Claims. If the Net Proceeds are insufficient to pay  
21 Allowed Unsecured Claims in full, then each Unsecured Claimant shall be  
22 paid its pro rata share of the amount owed to all Allowed Class 4 and 6  
23 Unsecured Claims. Proceeds from the malpractice claims against Saalfeld  
24 Griggs, Net Proceeds of the refinancing, or Net Proceeds from the sale of the  
25 Real Property and liquidation of assets shall first be paid to the Class 6  
26 Unsecured Claims until such payments equal the same percentage that Class 4

Claims have received to date, and thereafter Class 4 and Class 6 Unsecured Claims shall be paid from available funds on a pro rata basis.

(g) Class 7 (Class Action Claims Against Berman). Each holder of an Allowed Claim as a result of a Final Order entered in the Class Action Litigation and appeals will first be paid the full amount ultimately awarded by the Court, if any, if B. & J. has sufficient assets to make such payments and, if not, from the pro rata proceeds from the closing down/liquidation and sale of B. & J.'s business and assets. Any Class 7 Claims that remain after payment is made by B. & J. shall be paid a pro rata share of the Berman Unsecured Claims Fund described above. The Class 7 creditors' pro rata share of the Berman Unsecured Claims Fund shall be calculated from the total amount of Class 5 and Class 7 claims.

(h) Class 8 (Interests in B. & J.). The Plan provides that holders of Class 8 Interests will retain their interest in Reorganized B. & J., except in the event there are insufficient funds to pay Creditors, in which case the interest will be of no value.

(i) Class 9 (Berman's Interest in Estate). The Plan provides that Berman shall retain his interest in the property of his bankruptcy estate.

### **C. ADMINISTRATIVE EXPENSES**

B. & J. has retained the following professionals: (1) Tonkon Torp LLP as its general counsel in this case, (2) Saalfeld Griggs PC as its special purpose counsel, and (3) Fischer, Hayes, Joye & Allen LLC as its accountants. The total amount of Administrative Expense Claims is uncertain at this time. It is anticipated that some professionals may agree to defer payment of their Administrative Claim, if necessary. A statement of professional fees incurred in this case will be filed with the Court prior to the confirmation hearing.

Berman has retained the following professionals: (1) Motschenbacher & Blattner LLP as his general bankruptcy counsel in this case, and as appellate counsel in the Class Action, and (2) Fischer, Hayes, Joye & Allen LLC as his accountants. The total

1 amount of Administrative Expense Claims is uncertain at this time. It is anticipated that  
2 some professionals may agree to defer payment of their Administrative Claim, if necessary.  
3 A statement of professional fees incurred in this case will be filed with the Court prior to the  
4 confirmation hearing.

5 **D. EXECUTORY CONTRACTS**

6 The Bankruptcy Code gives Debtors the right, after commencement of their  
7 Chapter 11 Cases, subject to approval of the Bankruptcy Court, to assume or reject executory  
8 contracts and unexpired leases. Generally, an “executory contract” is a contract under which  
9 material performance (other than the payment of money) is still due by each party. The Plan  
10 provides for the assumption by debtors of all executory contracts and unexpired leases that  
11 are not expressly rejected or subject to a motion for rejection filed on or before the  
12 Confirmation Date.

13 If an executory contract or unexpired lease is or has been rejected, the other party to  
14 the agreement may file a Proof of Claim for damages resulting from such rejection. The Plan  
15 provides that a Proof of Claim with respect to any such Claim must be filed within 30 days of  
16 approval of the Bankruptcy Court of the rejection of the relevant executory contract or  
17 unexpired lease. Any such Claim shall constitute a Class 2 Claim to the extent such Claim is  
18 finally treated as an Allowed Claim. To the extent a debtor rejects an unexpired lease of  
19 nonresidential real property, the Claim for damages resulting from such rejection will be  
20 limited to the amount allowed under the Bankruptcy Code.

21 Upon assumption of an executory contract or unexpired lease, debtors must cure or  
22 provide adequate assurance of prompt cure of any monetary defaults. The Plan provides that  
23 Reorganized Debtors will promptly cure all monetary defaults.

1                   **E.       EFFECT OF CONFIRMATION**

2                   **1.       Binding Effect**

3                   The treatment of, and consideration received by, holders of Allowed Claims and  
4                   Interests pursuant to the Plan will be in full satisfaction of their respective Claims against or  
5                   Interests in Debtors. The Confirmation Order shall bind Debtors and any Creditor, and  
6                   discharge Debtors from any liability that arose before the Effective Date as provided in  
7                   Sections 524 and 1141 of the Bankruptcy Code, and any debt and liability of a kind specified  
8                   in Sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether or not (a) a proof of  
9                   claim based on such Creditor's debt or liability is Filed or deemed Filed under Section 501 of  
10                  the Bankruptcy Code, (b) a Claim based on such debt or liability is Allowed, or (c) the holder  
11                  of the Claim based on such debt or liability has accepted the Plan.

12                  **2.       Revesting, Operation of Business**

13                  All property of the bankruptcy estates shall revest in each respective Reorganized  
14                  Debtor on the Effective Date free and clear of all rights, claims, liens, charges,  
15                  encumbrances, and interests, except as otherwise specifically provided in the Plan. Except as  
16                  otherwise set forth in the Plan, there are no limitations or restrictions on the post-  
17                  confirmation activities or operations of Debtors.

18                  **3.       Injunction**

19                  The effect of confirmation shall be as set forth in Section 1141 of the Bankruptcy  
20                  Code. Except as otherwise provided in the Plan, prior order of the Bankruptcy Court, or in  
21                  the Confirmation Order, confirmation of the Plan shall act as a permanent injunction  
22                  applicable to entities against (a) the commencement or continuation, including the issuance  
23                  or employment of process, of a judicial, administrative, or other action or proceeding of any  
24                  kind against Debtors or Reorganized Debtors that was or could have been commenced before  
25                  entry of the Confirmation Order; (b) the enforcement, attachment, collection, or recovery  
26                  against Reorganized Debtors or their assets of any judgment, award, decree, or order

1 obtained before the Petition Date; (c) any act to obtain possession of or to exercise control  
2 over, or to create, perfect, or enforce a lien upon all or any part of the assets of Reorganized  
3 Debtors; (d) asserting any setoff or right of subrogation or recoupment of any kind against  
4 any obligation due to Debtors, Reorganized Debtors, or their property; and (e) proceeding in  
5 any manner in any place whatsoever that does not conform to, does not comply with, or is  
6 inconsistent with the provisions of the Plan or the Confirmation Order. Neither the  
7 injunction nor any provision of the Plan prohibits or otherwise overrides the Stipulated Relief  
8 From Stay Order which allows the Marion County Case to proceed to completion in state  
9 court, including all appeals.

#### 10 **4. Event of Default**

11 Any material failure by Reorganized Debtors to perform any term of the Plan, which  
12 failure continues for a period of 15 Business Days following receipt by Reorganized Debtors  
13 of written notice of such default from the holder of an Allowed Claim to whom performance  
14 is due, shall constitute an Event of Default. Upon the occurrence of an Event of Default, the  
15 holder of an Allowed Claim to whom performance is due shall have all rights and remedies  
16 granted by law, the Plan, or any agreement between the holder of such Claim and Debtors or  
17 Reorganized Debtors. An Event of Default with respect to one Claim shall not be an Event  
18 of Default with respect to any other Claim.

#### 19 **5. Modification of Plan; Revocation or Withdrawal of Plan**

20 Subject to Section 1127 of the Bankruptcy Code, Debtors reserve the right to alter,  
21 amend, modify, or withdraw the Plan before its substantial consummation so long as the  
22 treatment of holders of Claims and Equity Security Holders under the Plan are not adversely  
23 affected.  
24  
25  
26

1                                   **6.       Retention of Jurisdiction**

2           Notwithstanding entry of the Confirmation Order, the Court shall retain jurisdiction  
3 of this Chapter 11 Case pursuant to and for the purposes set forth in Section 1127(b) of the  
4 Bankruptcy Code and:

5                           (a)     to classify the Claim or interest of any Creditor or stockholder,  
6 reexamine Claims or Interests which have been owed for voting purposes, and determine any  
7 objections that may be Filed to Claims or Interests;

8                           (b)     to determine requests for payment of Claims entitled to priority  
9 under Section 507(a)(1) of the Bankruptcy Code, including compensation and reimbursement  
10 of expenses in favor of professionals employed at the expense of the Estates;

11                          (c)     to avoid liens, transfers, or obligations, or to subordinate  
12 Claims under Chapter 5 of the Bankruptcy Code;

13                          (d)     to approve the assumption, assignment, or rejection of an  
14 executory contract or an unexpired lease pursuant to this Plan;

15                          (e)     to resolve controversies and disputes regarding the  
16 interpretation of this Plan;

17                          (f)     to implement the provisions of this Plan and enter orders in aid  
18 of confirmation;

19                          (g)     to adjudicate adversary proceedings and contested matters  
20 pending or hereafter commenced in this Chapter 11 Case; and

21                          (h)     to enter a final decree closing this Chapter 11 proceeding.

22                                   **7.       United States Trustee Fees**

23                           ~~Reorganized~~Fees payable by Debtors ~~shall be responsible for timely payment under~~  
24 28 U.S.C. § 1930, or to the Clerk of the Bankruptcy Court, will be paid in full in Cash on the  
25 Effective Date. All quarterly fees incurred due to the United States Trustee pursuant to  
26 ~~28 U.S.C. § 1930(a)(6)~~ USC § 1930(a), including fees due for any partial quarter, accruing

1 after the Effective Date shall be paid by the Reorganized Debtors as and when they become  
2 due and will be based on the Reorganized Debtors' total disbursements, including ordinary  
3 course of business disbursements as well as disbursements made to Claimants under this  
4 Plan. Such fee obligations will not terminate until ~~the~~this Case is ~~closed~~, converted, or  
5 dismissed~~—~~, or until this Case is no longer pending upon entry of a Final Order closing this  
6 Case, whichever first occurs, and all United States Trustee fees, including any such fees  
7 accrued in any partial quarter, shall be paid as a condition precedent prior to entry of an order  
8 closing the case. After the Effective Date, the Reorganized Debtors shall file with the Court  
9 a post-confirmation, ~~Reorganized Debtors shall serve on the United States Trustee a monthly~~  
10 financial report for each ~~quarter~~month, or portion thereof, that the case ~~remains~~is open~~—~~ or  
11 during any period of time that the case is reopened. The ~~quarterly~~monthly financial report  
12 shall include a statement of all disbursements made during the course of the ~~quarter~~month,  
13 whether or not pursuant to the Plan. All United States Trustee fees, including any such fees  
14 accrued in any partial quarter, shall also be paid as a condition precedent prior to entry of a  
15 Final Decree.

## 16 **VIII. LIQUIDATION ANALYSIS**

17 A Plan of Reorganization cannot be confirmed unless the Bankruptcy Court finds that  
18 the Plan is in the “best interest of creditors” or holders of Claims against, and Equity Security  
19 in, Debtors subject to such plan. The best interest test is satisfied if a plan provides each  
20 dissenting or non-voting member of each impaired Class with a recovery not less than the  
21 recovery such member would receive if each Debtor was liquidated in a hypothetical case  
22 under Chapter 7 of the Bankruptcy Code by a Chapter 7 Trustee. Debtors believe the holders  
23 of impaired Claims will not receive less than they would receive under a Chapter 7  
24 liquidation. In applying the “best interest” test, the Bankruptcy Court would ascertain the  
25 hypothetical recovery in a Chapter 7 proceeding to Secured Creditors, priority claimants,  
26 General Unsecured Creditors, and Equity Interest Holders. The hypothetical Chapter 7

1 recoveries would then be compared with the distribution offered to each Class of Claims or  
2 Equity Security Holders under the Plan to determine that the Plan satisfied the “best interest”  
3 test set forth in the Bankruptcy Code.

4 A Chapter 7 liquidation of B. & J.’s case would result in the immediate cessation of  
5 B. & J.’s operations. Substantially all assets would be liquidated and distributed to the  
6 Secured Creditors, with Columbia Credit Union likely realizing its full \$2,225,037 secured  
7 claim amount plus default interest, costs, and fees, and the remaining General Unsecured,  
8 Litigation, and Equity Classes realizing less than the amount proposed under the Plan.

9 A Chapter 7 liquidation of Berman’s case would result in the immediate cessation of  
10 Berman’s primary source of income. Berman’s non-exempt assets would be liquidated and  
11 approximately \$43,703.33 would be available for distribution to all creditors, including  
12 Columbia’s \$2,225,037 claim on Berman’s personal guaranty. Calculations for a  
13 hypothetical Berman liquidation are set forth on the Liquidation Analysis attached hereto as  
14 **Exhibit 3**. The amount available in a Berman liquidation is less than the Berman Unsecured  
15 Claims Fund, and thus General Unsecured, Class Action, and Equity Classes would receive  
16 less in a Chapter 7 than the amount proposed under the Plan.

17 **IX. POSSIBLE U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**  
18 **CREDITORS AND INTEREST HOLDERS CONCERNED WITH HOW THE**  
19 **PLAN MAY AFFECT THEIR TAX LIABILITY SHOULD CONSULT WITH THEIR**  
20 **OWN ACCOUNTANTS, ATTORNEYS, AND/OR ADVISORS.**

21 The following discussion summarizes in general terms certain federal income tax  
22 consequences of implementation of the Plan based upon existing provisions of the Internal  
23 Revenue Code of 1986, as amended (the “Internal Revenue Code”), court decisions, and  
24 current administrative rulings and practice. This summary does not address the federal  
25 income tax consequences of the Plan to holders of priority or secured claims, nor does it  
26 address any state, local, or foreign tax matters, or the federal income tax consequences to



1 certain types of creditors (including financial institutions, life insurance companies, tax  
2 exempt organizations, and foreign taxpayers) to which special rules may apply. No rulings  
3 or opinions have been or will be requested from the Internal Revenue Service with respect to  
4 any of the tax aspects of the Plan.

5 THIS ANALYSIS DOES NOT ADDRESS THE TAX IMPLICATIONS OF THE  
6 PLAN TO ANY SPECIFIC CREDITOR. Substantial differences in the tax implications are  
7 likely to be encountered by creditors because of the difference in the nature of their Claims,  
8 taxpayer status, method of accounting, and the impact of prior actions they may have taken  
9 with respect to their Claims.

10 The following are the anticipated tax consequences of the Plan.

11 **A. TAX CONSEQUENCES TO DEBTORS**

12 Debtors do not anticipate any extraordinary or unusual tax consequences because all  
13 claims are expected to be paid in full. Debtors will experience ordinary income from  
14 continued operations and earnings, and will be entitled to deduct business expenses for any  
15 business related and interest expenses. Debtors do not anticipate any cancellation of debt  
16 income. In the event B. & J. sells its real property, B. & J. shall pay any applicable capital  
17 gains taxes that result from the sale.

18 **B. GENERAL TAX CONSEQUENCES ON CREDITORS**

19 Creditors will likely not experience any unusual or extraordinary tax consequence  
20 following Confirmation of the Plan. Payments will be treated in the same manner as they  
21 were treated before Confirmation of the Plan. As discussed above, the effect of the Plan on  
22 specific creditors will depend on specific financial information relative to such creditor and  
23 that is unknown to Debtors. As a result, the tax implications to specific creditors cannot be  
24 completely described herein.

25 EACH HOLDER IS URGED TO CONSULT SUCH HOLDER'S OWN TAX  
26 ADVISOR AS TO THE CONSEQUENCES OF THE PLAN TO SUCH HOLDER UNDER

1 FEDERAL AND APPLICABLE STATE, LOCAL, AND FOREIGN TAX LAWS.  
2 DEBTORS AND DEBTORS' COUNSEL EXPRESS NO OPINION AS TO THE TAX  
3 CONSEQUENCES OF THE PLAN OR THE EFFECT THEREOF ON ANY CLAIMANT.

4 **X. ACCEPTANCE AND CONFIRMATION OF THE PLAN**

5 **A. CONFIRMATION HEARING**

6 The Bankruptcy Court has scheduled a hearing on confirmation of the Plan on  
7 \_\_\_\_\_, 2019 at \_\_\_\_m Pacific time. The hearing will be held at the  
8 U.S. Bankruptcy Court for the District of Oregon, 1050 SW Sixth Avenue, #700, Portland,  
9 Oregon in Courtroom No. \_\_\_\_\_, before the Honorable \_\_\_\_\_, United States  
10 Bankruptcy Judge. At that hearing, the Bankruptcy Court will consider whether the Plan  
11 satisfies the various requirements of the Bankruptcy Code, including whether it is feasible  
12 and whether it is in the best interest of Creditors and Equity Security Holders of Debtors.  
13 Debtors will submit a report to the Bankruptcy Court prior to the hearing concerning the  
14 votes for acceptance or rejection of the Plan by the parties entitled to vote thereon. Any  
15 objection to confirmation of the Plan must be timely filed on or before \_\_\_\_\_,  
16 2019 to be considered by the Court.

17 **B. REQUIREMENTS OF CONFIRMATION**

18 At the hearing on confirmation, the Bankruptcy Court will determine whether the  
19 provisions of Section 1129 of the Bankruptcy Code have been satisfied. If all of the  
20 provisions of Section 1129 are met, the Bankruptcy Court may enter an order confirming the  
21 Plan. Debtor believes the Plan satisfies all the requirements of Chapter 11 of the Bankruptcy  
22 Code, that it has complied or will have complied with all of the requirements of Chapter 11,  
23 and that the Plan has been proposed and is made in good faith.

24 With respect to Berman's Plan, the "Absolute Priority Rule" will apply in the event  
25 that all of the following occur: (1) Debtors are unsuccessful on their appeal, (2) the Class  
26 Action Creditors do not accept the Plan, (3) the Class Action Claims are not fully paid by

1 B. & J., and (4) the remainder of the Class Action Claims are not paid in full from the  
2 Berman Unsecured Claims Fund. The Absolute Priority Rule provides that unsecured  
3 creditors in a dissenting impaired class must be satisfied in full before the debtor is allowed  
4 to retain any property under the plan. In Berman's case, Berman proposes to retain  
5 approximately \$97,665.13 of non-exempt property. Specifically, the non-exempt portion of  
6 equity in his residence, and the amount of cash Berman held on hand and in his checking  
7 account on the Petition Date. In the event the Absolute Priority Rule applies, Berman  
8 proposes to obtain a loan from family or from a financial institution to pay the Class Action  
9 Claims the lesser of \$98,000, or the amount needed to pay the remaining balance of the Class  
10 Action Claims. See Section 7.7 of the Plan.

11 **C. CRAMDOWN**

12 A Court may confirm a Plan, even if it is not accepted by all impaired classes, if the  
13 Plan has been accepted by at least one impaired class of claims and the Plan meets the  
14 cramdown requirements set forth in Section 1129(b) of the Bankruptcy Code. In the event  
15 any impaired Class of Claims does not accept the Plan, Debtor hereby requests the  
16 Bankruptcy Court to confirm the Plan in accordance with Section 1129(b) of the Bankruptcy  
17 Code or otherwise permit Debtors to modify the Plan.

18 **C.D. FEASIBILITY**

19 Debtors believe that confirmation of the Plan is not likely to be followed by the  
20 liquidation of either of the Reorganized Debtors or a need for a further financial  
21 reorganization of Reorganized Debtors. The projections of B. & J.'s post-confirmation  
22 business, attached hereto as **Exhibit 1**, show sufficient earnings and cash flow from  
23 operations to support and meet the ongoing financial needs of Reorganized B. & J. The  
24 projections indicate that the Plan as proposed by Debtors is feasible and that Reorganized  
25 Debtors will be financially viable after confirmation of the Plan or B. & J. shall liquidate.  
26 The ultimate payout to the Class Action Creditors will be dependent on the result of the state

1 court appeals. If the Class Action Creditors prevail in full, then the likely result is that  
2 B. & J. will be liquidated. The Plan provides for such a liquidation and, as such, it is feasible  
3 even if Debtors do not prevail on the appeal.

4 **D.E. CONFIRMATION REQUIREMENTS FOR INDIVIDUAL DEBTOR**

5 To confirm the Plan, the Court must find that “the value of the property to be  
6 distributed under the plan is not less than the projected disposable income of Debtor (as  
7 defined in Section 1325(b)(2)) to be received during the five-year period beginning on the  
8 date the first payment is due under the Plan, or during the period for which the Plan provides  
9 payments, whichever is longer.” 11 U.S.C. § 1129(a)(15)(B). The Plan proposes to pay  
10 Berman’s creditors from the Berman Unsecured Claims Fund, which will be funded with  
11 Berman’s projected disposable income (as defined in Section 1325(b)(2)) to be received by  
12 Berman during the five-year period beginning on the Effective Date. See **Exhibit 2**, attached  
13 hereto. The Plan therefore complies with Section 1129(a)(15)(B).

14 **E.F. ALTERNATIVES TO CONFIRMATION OF THE PLAN**

15 If a Plan is not confirmed, Debtors or another party-in-interest may attempt to  
16 formulate or propose a different Plan or Plans of Reorganization. Such Plans might involve a  
17 reorganization and continuation of B. & J.’s business, a sale of B. & J.’s business as a going  
18 concern, an orderly liquidation of B. & J.’s assets, or any combination thereof. If no Plan of  
19 Reorganization is determined by the Bankruptcy Court to be confirmable, the Chapter 11  
20 case may be converted to a liquidation proceeding under Chapter 7 of the Bankruptcy Code.

21 In a liquidation, a Chapter 7 Trustee would be appointed with the purpose of  
22 liquidating the assets of Debtors. Typically, in liquidation, assets are sold for less than their  
23 going concern value and, accordingly, the return to Creditors and Interest holders is less than  
24 the return in a reorganization, which derives the value to be distributed in a Plan from the  
25 business as a going concern. Proceeds from liquidation would be distributed to Creditors and  
26 Interest holders of Debtors in accordance with the priorities set forth in the Bankruptcy Code.

Debtors believe there is no currently available alternative that would offer holders of Claims and Interests in Debtors greater than the Plan and urges all parties entitled to vote on the Plan to vote to accept the Plan.

#### **XI. CONCLUSION**

Please read this Disclosure Statement and the Plan carefully. After reviewing all the information and making an informed decision, please vote by using the enclosed ballot.

DATED this ~~15th~~<sup>8th</sup> day of ~~July~~<sup>October</sup>, 2019.

Respectfully submitted,

B. & J. PROPERTY INVESTMENTS, INC.

By /s/ William J. Berman  
William J. Berman, President

By /s/ William J. Berman  
William J. Berman, Personally

Presented by:

TONKON TORP LLP

By /s/ Timothy J. Conway  
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2  
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5 Attorneys for William J. Berman

6  
7 **EXHIBITS ATTACHED:**

8 Exhibit 1: B. & J. Financial Projections

9 Exhibit 2: Berman Projected Disposable Income Calculation

Exhibit 3: Berman Liquidation Analysis

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Attorneys for William J. Berman

UNITED STATES BANKRUPTCY COURT

DISTRICT OF OREGON

In re

B. & J. Property Investments, Inc.,

Debtor.

Case No. 19-60138-pcm11

In re

William J. Berman,

Debtor

Case No. 19-60230-pcm11

**DEBTORS' AMENDED JOINT  
DISCLOSURE STATEMENT  
(OCTOBER 8, 2019)**

DEBTORS' AMENDED JOINT DISCLOSURE STATEMENT (OCTOBER 8, 2019)

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1 **I. INTRODUCTION AND SUMMARY**

2 **A. INTRODUCTION**

3 On January 17, 2019 (the “B. & J. Petition Date”), B. & J. Property Investments, Inc.  
4 (“B & J,” or the “Company”) filed a voluntary petition under Chapter 11 of Title 11 of the  
5 United States Bankruptcy Code (the “Bankruptcy Code”). On January 28, 2019 (the  
6 “Berman Petition Date”), William J. Berman (“Berman”) filed a voluntary petition under  
7 Chapter 11 of the Bankruptcy Code. On July 15, 2019, the Company and Berman  
8 (collectively, “Debtors”) filed this Disclosure Statement (the “Disclosure Statement”) with  
9 the U.S. Bankruptcy Court for the District of Oregon (the “Bankruptcy Court”) and their  
10 Joint Plan of Reorganization (the “Plan”). A copy of the Plan is included herewith.

11 This Disclosure Statement is being provided to you by Debtors to enable you to make  
12 an informed judgment about the Plan. This Disclosure Statement has been prepared to  
13 disclose information that in Debtors’ opinion is material, important, and helpful to evaluate  
14 the Plan. Among other things, this Disclosure Statement describes the manner in which  
15 Claims and Equity Securities will be treated. This Disclosure Statement summarizes the  
16 Plan, explains how the Plan will be implemented, outlines the risks of and alternatives to the  
17 Plan, and outlines the procedures involved in confirmation of the Plan. The description of  
18 the Plan contained in this Disclosure Statement is intended as a summary only and is  
19 qualified in its entirety by reference to the Plan itself. If any inconsistency exists between the  
20 Plan and this Disclosure Statement, the terms of the Plan shall control. You are urged to  
21 review the Plan and, if applicable, consult with your own counsel about the Plan and its  
22 impact on your legal rights before voting on the Plan.

23 Capitalized terms used but not defined in this Disclosure Statement shall have the  
24 meanings assigned to such terms in the Plan or the Bankruptcy Code. Factual information  
25 contained in this Disclosure Statement is the representation of Debtors only and not of their  
26 attorneys, consultants, or accountants. The information has been obtained from the books

1 and records of Debtors as well as other sources deemed reliable. Debtors have prepared the  
2 information contained herein in good faith, based on information available to Debtors. The  
3 information herein has not been subject to a verified audit. No representation concerning  
4 Debtors or the Plan is authorized by Debtors other than as set forth in this Disclosure  
5 Statement.

6 The statements contained in this Disclosure Statement are made as of the date hereof  
7 unless another time is specified herein and the delivery of this Disclosure Statement shall not  
8 imply that there has been no change in the facts set forth herein since the date of this  
9 Disclosure Statement and the date the material relied on in preparation of this Disclosure  
10 Statement was compiled.

11 This Disclosure Statement may not be relied on for any purpose other than to  
12 determine how to vote on the Plan. Nothing contained herein shall constitute an admission of  
13 any fact or liability by any party, or be admissible in any proceeding involving Debtors or  
14 any other party, or be deemed advice on the tax or other legal effects of the Plan on the  
15 holders of Claims or Equity Securities.

16 This Disclosure Statement has been approved by Order of the Bankruptcy Court as  
17 containing information of a kind and in sufficient detail to enable a hypothetical reasonable  
18 investor typical of holders of Claims or Equity Securities of relevant classes to make an  
19 informed judgment concerning the Plan. The Bankruptcy Court's approval of this Disclosure  
20 Statement, however, does not constitute a recommendation by the Bankruptcy Court either  
21 for or against the Plan.

22 The Bankruptcy Court has scheduled a hearing on confirmation of the Plan to  
23 commence on \_\_\_\_\_, 2019 at \_\_\_\_\_ Pacific time. That hearing will be held at  
24 the U.S. Bankruptcy Court for the District of Oregon, 1050 SW Sixth Ave.,  
25 Courtroom \_\_\_\_\_, Portland, Oregon 97204, before the Honorable \_\_\_\_\_.

26 The hearing on confirmation may be adjourned from time to time by the Bankruptcy Court

1 without further notice except for an announcement made at the hearing on any adjournment  
2 thereof.

3 A ballot has been enclosed with this Disclosure Statement for use in voting on the  
4 Plan. In order to be tabulated for purposes of determining whether the Plan has been  
5 accepted or rejected, ballots must be received at the address indicated on the ballot no later  
6 than 4:00 p.m. on \_\_\_\_\_, 2019. Debtors believe that confirmation of the Plan is in the  
7 best interests of the holders of Claims and urge you to accept the Plan.

8 This Disclosure Statement contains projected financial information and estimates that  
9 demonstrate the feasibility of the Plan of Reorganization and Debtors' ability to continue  
10 operations upon emergence from proceedings under the Bankruptcy Code. Debtors prepared  
11 such information for the limited purpose of furnishing information to Creditors to allow them  
12 to make an informed judgment regarding acceptance of the Plan of Reorganization. The  
13 projections and estimates of value should not be regarded for the purpose of this Disclosure  
14 Statement as representations or warranties by Debtors as to the accuracy of such information  
15 or that any such projections or valuations will be realized. Actual results could vary  
16 significantly from these projections.

## 17 **B. SUMMARY OF THE PLAN**

18 A copy of the Plan is attached and discussed in detail later in this Disclosure  
19 Statement. The following description of the Plan is intended as a summary only and is  
20 qualified in its entirety by reference to the Plan. Debtors urge each holder of a Claim to  
21 carefully review the entire Plan, together with this Disclosure Statement, before voting on the  
22 Plan.

### 23 **1. General**

24 Generally, the Plan provides that (a) Debtors will operate in the ordinary course and  
25 pay and satisfy their obligations from revenue generated by operations; and (b) Debtors shall  
26 seek to prevail on the appeal in the Class Action Case so they may pay all Creditors in full

1 over time; or (c) if Debtors are unable to prevail, or at least substantially prevail on the  
2 appeal, (i) B. & J. will pursue its malpractice claim against Saalfeld Griggs and if insufficient  
3 funds are recovered, B. & J. will then seek to refinance or sell the Real Property and liquidate  
4 its assets, with the Net Proceeds to be distributed pro rata to Unsecured Creditors; and  
5 (ii) Berman will distribute to unsecured creditors all the projected disposable income he  
6 believes he will receive during the five-year period after the Effective Date.

## 7 **2. Secured Creditors**

8 Reorganized B. & J.'s secured Creditor, Columbia Credit Union ("Columbia"), will  
9 be paid the full amount of its Allowed Secured Claim in accordance with the existing terms  
10 of its loan to B. & J., except as modified under the Plan with respect to certain loan terms and  
11 covenants set forth in the Plan. The payments to Columbia will be approximately \$14,080  
12 per month.

13 Reorganized Berman's secured Creditor, Quicken Loans, Inc. ("Quicken Loans"),  
14 will be paid the full amount of its Allowed Secured Claim in accordance with the existing  
15 terms of its loan to Berman. Berman's payments to Quicken Loans will be approximately  
16 \$2,852 per month.

## 17 **3. General Unsecured Creditors**

18 If B. & J. prevails on the appeal of the Class Action Case, B. & J.'s General  
19 Unsecured Creditors will be paid in full, together with interest at the federal judgment rate in  
20 effect on the Effective Date. If B. & J. does not prevail on the appeal of the Class Action  
21 Case, and there are insufficient funds from a refinancing or liquidation of the malpractice  
22 claims, then General Unsecured Creditors will be paid pro rata from the sale and liquidation  
23 of B. & J.'s assets on a pro rata basis with the Class Action Claims.

24 To the extent not paid by B. & J., Reorganized Berman's General Unsecured  
25 Creditors and Class Action Creditors (discussed below) shall be paid their pro rata share of  
26

1 \$60,000, which is Berman's projected disposable income for the five-year period following  
2 the Effective Date. See **Exhibit 3**, attached hereto.

#### 3 **4. Class Action Creditors**

4 Certain Creditors in the Marion County Case (the "Class Action Claims") were  
5 awarded a General Judgment in the total amount of \$4,864,951 against Debtors on  
6 October 31, 2018, which Debtors have appealed. If the Class Action Claims are denied on  
7 appeal, they will receive nothing. If the Class Action Claims are allowed and prevail on  
8 appeal, then such Allowed Claims will be paid in full if B. & J. has sufficient funds to do so  
9 once the appeals have concluded, or B. & J. will liquidate its assets and pay the Class Action  
10 Creditors from available funds. B. & J. plans to file an adversary proceeding under 11  
11 USC § 547 avoiding the judgment lien obtained by the Class Action Claimants as a  
12 bankruptcy preference. If the B. & J. preference claim is successful, the Class Action Claims  
13 will be Unsecured Claims even if Allowed. If the preference claim is not successful and the  
14 Class Action plaintiffs prevail on the appeal, they would have a Secured Claim against the  
15 Real Property up to the value of the Real Property in excess of prior liens. If Class Action  
16 Claims are paid in full and entitled to interest, they shall receive interest at the federal  
17 judgment rate. To the extent the Allowed Class Action Creditors are not paid in full by  
18 B. & J., they shall receive payment from Berman in the amount of their pro rata share of  
19 \$60,000.

#### 20 **5. Equity Interests**

21 The Plan provides that existing equity interests in B. & J. will be left in place unless  
22 the Company is liquidated, in which case equity will be extinguished.

23 The Plan provides that Berman will retain his interests in assets of his bankruptcy  
24 estate.  
25  
26

1                               **6.       Leases and Executory Contracts**

2               All unexpired leases and executory contracts will be assumed by the respective  
3 Debtors through the Plan unless such unexpired leases and executory contracts have  
4 previously been assumed and assigned or rejected, or a motion seeking their assumption or  
5 rejection has been filed before the Confirmation Date.

6                               **7.       Effective Date**

7               The Effective Date of the Plan shall be the 11th day following entry of the  
8 Confirmation Order.

9                               **8.       Cramdown Election**

10              In the event any Class does not accept the Plan, Debtors reserve the right to request  
11 that the Bankruptcy Court confirm the Plan in accordance with Section 1129(b) of the  
12 Bankruptcy Code or otherwise modify the Plan.

13                           **C.       BRIEF EXPLANATION OF CHAPTER 11**

14              Chapter 11 is the principal reorganization provision of the Bankruptcy Code.  
15 Pursuant to Chapter 11, a debtor attempts to reorganize its business for the benefit of the  
16 debtor, its creditors, and other parties-in-interest.

17              The formulation and confirmation of a plan of reorganization is the principal purpose  
18 of a Chapter 11 case. A plan of reorganization sets forth the method for compensating the  
19 holders of claims and interests in Debtor. If the plan is confirmed by the Bankruptcy Court,  
20 it will be binding on Debtors, their creditors, and all other parties-in-interest. A claim or  
21 interest is impaired under a plan of reorganization if the plan provides that the legal,  
22 equitable, or contractual rights of the holder of such claim or interest are altered. A holder of  
23 an impaired claim or interest is entitled to vote to accept or reject the plan. Chapter 11 does  
24 not require all holders of claims and interests to vote in favor of a plan in order for the  
25 Bankruptcy Court to confirm it. However, the Bankruptcy Court must find that the plan  
26 meets a number of statutory tests before it may approve the plan. These tests are designed to

1 protect the interests of holders of claims or interests who do not vote to accept the plan, but  
2 who will nonetheless be bound by the plan's provisions if it is confirmed by the Bankruptcy  
3 Court.

4 An Unsecured Creditors' Committee was not appointed by the U.S. Trustee's office  
5 in this case pursuant to 11 U.S.C. §§ 1102(a) and (b).

## 6 **II. VOTING PROCEDURES AND CONFIRMATION OF PLAN**

### 7 **A. BALLOTS AND VOTING DEADLINE**

8 A ballot to be used for voting to accept or reject the Plan is enclosed with each copy  
9 of this Disclosure Statement. After carefully reviewing this Disclosure Statement and its  
10 exhibits, including the Plan, please indicate your acceptance or rejection of the Plan by  
11 voting in favor or against the Plan on the enclosed ballot as directed below.

12 The Bankruptcy Court has directed that, to be counted for voting purposes, ballots for  
13 the acceptance or rejection of the Plan must be received by Debtors no later than 4:00 p.m.  
14 Pacific time on \_\_\_\_\_, 2019 at the following address:

15 Tonkon Torp LLP  
16 Attention: Spencer Fisher  
17 1600 Pioneer Tower  
888 SW Fifth Avenue  
Portland, OR 97204-2099

18 or via facsimile transmission to Spencer Fisher at (503) 972-3867.

19 Holders of each Claim scheduled by Debtors or with respect to which a Proof of  
20 Claim has been filed will receive ballots and are permitted to vote based on the amount of the  
21 Proof of Claim, except as discussed below. If no Proof of Claim has been filed, then the vote  
22 will be based on the amount scheduled by Debtors in their Schedules. The Bankruptcy Code  
23 provides that such votes will be counted unless the Claim has been disputed, disallowed,  
24 disqualified, or suspended prior to computation of the vote on the Plan. A Claim to which an  
25 objection has been filed is not allowed to vote unless and until the Bankruptcy Court rules on  
26 the objection. Holders of disputed Claims who have settled their dispute with Debtors are



1 entitled to vote the settled amount of their Claim. The Bankruptcy Code and rules provide  
2 that the Bankruptcy Court may, if timely requested to do so by the holder of such Claim,  
3 estimate or temporarily allow a disputed Claim for the purposes of voting on the Plan.

4 If a person holds Claims in more than one Class entitled to vote on the Plan, such  
5 person will be entitled to complete and return a ballot for each Class. If you do not receive a  
6 ballot or if a ballot is damaged or lost, please contact:

7 Tonkon Torp LLP  
8 Attention: Spencer Fisher  
9 1600 Pioneer Tower  
10 888 SW Fifth Avenue  
11 Portland, OR 97204-2099  
12 Telephone: (503) 802-2167

13 All persons entitled to vote on the Plan may cast their vote for or against the Plan by  
14 completing, dating, and signing the enclosed ballot and returning it, by First Class mail or  
15 hand delivery, to Debtors at the address indicated above. In order to be counted, all ballots  
16 must be executed and received at the above address no later than 4:00 p.m. Pacific time on  
17 \_\_\_\_\_, 2019. Any ballots received after 4:00 p.m. Pacific time on  
18 \_\_\_\_\_, 2019 will not be included in any calculation to determine whether the  
19 parties entitled to vote on the Plan have voted to accept or reject the Plan.

20 Ballots may also be received by Debtors by facsimile transmission to Tonkon Torp  
21 LLP, Attention: Spencer Fisher, at (503) 972-3867. Ballots sent by facsimile transmission  
22 will be counted if faxed to Mr. Fisher and received by 4:00 p.m. Pacific time on  
23 \_\_\_\_\_, 2019.

24 When a ballot is signed and returned without further instruction regarding acceptance  
25 or rejection of the Plan, the signed ballot shall be counted as a vote accepting the Plan. When  
26 a ballot is returned indicating acceptance or rejection of the Plan but is unsigned, the  
27 unsigned ballot will not be included in any calculation to determine whether parties entitled  
28 to vote on the Plan have voted to accept or reject the Plan. When a ballot is returned without

1 indicating the amount of the Claim or an amount different from a timely filed Proof of Claim,  
2 then the amount shall be as set forth on Debtor's Schedules or any timely Proof of Claim  
3 filed with respect to such Claim or Order of the Bankruptcy Court.

4 **B. PARTIES ENTITLED TO VOTE**

5 Pursuant to Section 1126 of the Bankruptcy Code, each Class of impaired Claims or  
6 Equity Security Holders that is not deemed to reject the Plan is entitled to vote to accept or  
7 reject the Plan. Any holder of an Allowed Claim that is in an impaired Class under the Plan,  
8 and whose Class is not deemed to reject the Plan, is entitled to vote. A Class is "impaired"  
9 unless the legal, equitable, and contractual rights of the holders of Claims in that Class are  
10 left unaltered by the Plan or if the Plan reinstates the Claims held by members of such  
11 Class by (i) curing any defaults; (ii) reinstating the maturity of such Claim;  
12 (iii) compensating the holder of such Claim for damages that result from the reasonable  
13 reliance on any contractual provision or law that allows acceleration of such Claim; and  
14 (iv) otherwise leaving unaltered any legal, equitable, or contractual right of which the Claim  
15 entitles the holder of such Claim. Because of their favorable treatment, Classes that are not  
16 impaired are conclusively presumed to accept the Plan. Accordingly, it is not necessary to  
17 solicit votes from the holders of Claims in Classes that are not impaired. Classes of Claims  
18 or Interests that will not receive or retain any money or property under a Plan on account of  
19 such Claims or Interests are deemed, as a matter of law under Section 1126(g) of the  
20 Bankruptcy Code, to have rejected the Plan and are likewise not entitled to vote on the Plan.  
21 All Classes of Claims are impaired under Debtors' Plan.

22 **C. VOTES REQUIRED FOR CLASS ACCEPTANCE OF THE PLAN**

23 As a condition to confirmation, the Bankruptcy Code requires that each impaired  
24 Class of Claims or Interests accept the Plan, subject to the exceptions described below in the  
25 section entitled "Cramdown of the Plan." In a "Cramdown," at least one impaired Class of  
26 Claims must accept the Plan in order for the Plan to be confirmed.

1 For a Class of Claims to accept the Plan, Section 1126 of the Bankruptcy Code  
2 requires acceptance by Creditors that hold at least two-thirds in dollar amount and a majority  
3 in number of the Allowed Claims of such Class, in both cases counting only those Claims  
4 actually voting to accept or reject the Plan. The holders of Claims who fail to vote are not  
5 counted as either accepting or rejecting the Plan. If the Plan is confirmed, the Plan will be  
6 binding with respect to all holders of Claims and Interests in each Class, including Classes  
7 and members of Classes that did not vote or that voted to reject the Plan.

8 **D. "CRAMDOW" OF THE PLAN**

9 If the Plan is not accepted by all of the impaired Classes of Claims and Interests of  
10 Debtors, the Plan may still be confirmed by the Bankruptcy Court pursuant to  
11 Section 1129(b) of the Bankruptcy Code's "Cramdown" provision if the Plan has been  
12 accepted by at least one Impaired Class of Claims, without counting the acceptances of any  
13 Insiders of Debtor, and the Bankruptcy Court determines, among other things, that the Plan  
14 "does not discriminate unfairly" and is "fair and equitable" with respect to each  
15 non-accepting Impaired Class of Claims or Interests. Debtors believe the Plan can be  
16 confirmed even if it is not accepted by all impaired Classes of Claims and hereby request the  
17 Bankruptcy Court to confirm the Plan in accordance with Section 1129(6) of the Bankruptcy  
18 Code or otherwise modify the Plan in the event any Class of Creditors does not accept the  
19 Plan.

20 **E. CONFIRMATION HEARING**

21 The Bankruptcy Court has scheduled a hearing on confirmation of the Plan to  
22 commence on \_\_\_\_\_, 2019, at \_\_\_ a.m. Pacific time. The confirmation hearing  
23 will be held at the U.S. Bankruptcy Court for the District of Oregon, Courtroom \_\_\_\_\_, 1050  
24 SW Sixth Avenue,, Portland, Oregon, before the Honorable \_\_\_\_\_, United  
25 States Bankruptcy Judge. At the hearing, the Bankruptcy Court will consider whether the  
26 Plan satisfies the various requirements of the Bankruptcy Code, including whether it is

feasible and whether it is in the best interests of the Creditors of Debtors. Prior to the hearing, Debtors will submit a report to the Bankruptcy Court concerning the votes for acceptance or rejection of the Plan by the persons entitled to vote thereon.

Section 1128(b) of the Bankruptcy Code provides that any party-in-interest may object to confirmation of the Plan. Any objections to confirmation of the Plan must be made in writing and filed with the Bankruptcy Court and received by counsel for Debtors no later than 4:00 p.m. Pacific time on \_\_\_\_\_, 2019. Unless an objection to confirmation is timely filed and received, it will not be considered by the Bankruptcy Court.

### **III. COMPANY BACKGROUND AND GENERAL INFORMATION**

#### **A. DEBTORS**

B. & J. is an Oregon corporation authorized to transact business in various jurisdictions, including the State of Oregon, and is headquartered in Oregon.

B. & J. is the owner of real estate located at 4490 Silverton Road, N.E., Salem, Oregon ("Premises"). On the Petition Date, the Premises were leased to Better Business Management ("BBM"). BBM owned and operated an RV park and self-storage unit business on the Premises entitled Salem RV park and Storage. The Premises consist of a 158-unit RV park and a 243-Unit, 29,750-square-foot (net rentable area) self-storage facility on a 9.06-acre parcel. A 6,758-square-foot general purpose building that includes an office, laundry facilities, restrooms with showers, and a recreation room is located on the Premises. The building also includes 17 upstairs storage units that have been included in the total count and rentable area.

Berman is an individual residing in the State of Oregon, and is the President and 50% shareholder of B. & J.

#### **B. DEBTORS' BUSINESS**

Prior to the Petition Date, B. & J. historically engaged in the real estate investment and development business. B. & J. was formed in the early 1990s and developed various

1 projects, including the real property at 4490 Silverton Road. As part of its business plan to  
2 develop other properties and not operate an RV park, B. & J. entered into a Commercial  
3 Lease on or about January 30, 1997, leasing the Premises to BBM, which lease had been  
4 subsequently amended and extended at various times up to the Petition Date (collectively, the  
5 “BBM Lease”). Under the BBM Lease, BBM owned, operated, and maintained the RV park  
6 and self-storage facility and made lease payments to B. & J. When the Marion County  
7 Circuit Court entered a General Judgment against B. & J., BBM, and Berman on October 31,  
8 2018 (see “Marion County Litigation” below), BBM became insolvent and unable to  
9 continue performance and was, therefore, in breach of the Lease. On the Petition Date,  
10 B. & J. sought Court authority to reject the BBM Lease and to change its business model to  
11 start operating an RV park and self-storage unit business. (See B. & J.’s Motion to Reject  
12 Commercial Lease and Authorize Use and Operation of Property as RV park and Self-  
13 Storage Facility [ECF No. 7]. The Court granted Debtor’s motion on February 13, 2019  
14 [ECF No. 104].<sup>1</sup>

15 Prior to filing the Bankruptcy Cases, Berman’s principal business was operating  
16 B. & J. and BBM, and other real estate-centered entities. Berman intends to continue  
17 operating B. & J. under its new business model, and also intends to operate the other business  
18 entities in which he has been involved in the past.

19 **C. MANAGEMENT OF B. & J.**

20 B. & J. is an Oregon corporation owned 50% by William J. Berman and 50% by  
21 Debra Lynn Berman. Mr. Berman is the president of Debtor and Ms. Berman is the  
22 secretary. Together they have over 25 years of real estate development and investment  
23 experience and 26 years of experience in the RV park and storage rental business.  
24 Reorganized B. & J. will consist of the same owners and management as currently exists.

25 <sup>1</sup> Unless otherwise specified, all references to docket entry numbers refer to B. & J.’s case,  
26 Bankruptcy Case No. 19-60138-pcm11.

1 Although B. & J. employs additional employees to maintain and repair its property in the  
2 ordinary course, Mr. and Ms. Berman perform much of the maintenance and repairs  
3 themselves, in addition to their management duties, saving B. & J. considerable expense and  
4 enhancing the value of B. & J.'s property. All B. & J. employees are at-will employees.  
5 There are no retiree benefits to be paid by Reorganized Debtor employees.

#### 6 **D. MARION COUNTY LITIGATION**

7 On or about April 12, 2013, Loren Hathaway, on behalf of himself and all others  
8 similarly situated within the State of Oregon, et. al, commenced a class action case against  
9 Debtor, BBM, and Berman in the Circuit Court for the State of Oregon for the County of  
10 Marion as Case No. 13C14321 ("Marion County Case"). Plaintiffs in the Marion County  
11 Case asserted claims for relief based on the manner in which BBM charged utility services to  
12 tenants at the RV park and later for rent retaliation. Plaintiffs obtained an order against  
13 BBM, the owner and operator of the Salem RV park, for approximately \$4 million dollars for  
14 improper utility charges. The court entered a judgment against BBM in spite of the fact that  
15 the RV park never made any money on the utility charges. The liability was based on a  
16 statutory construction of how kilowatt hours were charged to tenants and for charging a fixed  
17 meter fee.

18 The fact that the tenants actually paid less for the utility services (at the commercial  
19 rate) than they would have paid had they been charged the full residential utility rate was  
20 deemed immaterial. The court imposed damages equal to two times the tenants' monthly  
21 rental rate for each month of the tenant's occupancy. When BBM tried to adjust its rates in a  
22 revenue neutral manner to comport with the court's ruling, plaintiffs' demand, and in  
23 accordance with the advice of its counsel, Saalfeld Griggs, BBM was then hit with a  
24 retaliation claim for which it was also found liable in the sum of approximately \$1 million.  
25 Once plaintiffs obtained liability against BBM, plaintiffs sought to impose liability on B. & J.  
26 as the owner of the property, and against Berman individually under piercing theories. The

1 state court ruled that Berman and B. & J. were also liable for all of the damages owed by  
2 BBM. The court entered a General Judgment against B. & J., BBM, and Berman on  
3 October 31, 2018, in the sum of \$3,900,501 on the electrical charge claims to the Main  
4 Class members, plus \$964,450 to the Retaliation Sub-Class members. Plaintiffs have  
5 submitted their claim for attorneys' fees and costs to the Court pursuant to ORCP 68. The  
6 Court has issued an opinion granting Plaintiffs' attorneys' fees, but further proceedings are  
7 necessary to determine the final amount, and for entry of an order and judgment. Defendants  
8 BBM, Berman, and B. & J. have filed an appeal of the initial judgment and will appeal the  
9 attorney fees award. Debtors expect to prevail, or at least substantially prevail, on appeal.

10 **E. ELECTRICAL BILLING AT THE RV PARK**

11 Salem R.V. Park was planned and developed by Eugene Jones (Ms. Berman's father)  
12 and was opened in 1991. During planning and development of the park, Mr. Jones met and  
13 coordinated with the various municipalities and utilities. Mr. Jones met with Portland  
14 General Electric to design an electric grid for the park's 124, and later 158, individually-  
15 metered sites, and to provide guidance as to an electrical billing system that was legal and  
16 equitable. Despite Mr. Jones' desire to have a residential electrical meter at each and every  
17 individual site (providing an exact kilowatt usage and billing per site), PGE determined that  
18 only 16 PGE commercial meters would be installed on the property.

19 This forced the park operator to act as a middleman for electrical billing by making  
20 them the responsible party for determining the gross power consumption of each individual  
21 tenant. In the spirit of fairness, Mr. Jones placed a sub-meter at each of the sites, which  
22 allowed the park to accurately allocate power consumption to the individual sites and ensured  
23 that low power users would not subsidize high power users and that enabled all tenants to  
24 benefit from the much lower commercial rates.

25 With further guidance from PGE, this system of allocating power to each individual  
26 tenant site through a monthly sub-meter reading by the park operator was established and

1 implemented with the understanding that while the park operator could not make a profit on  
2 electrical billing, it could charge a basic fee, or meter fee, not to exceed the basic charge  
3 billed by PGE. The billing system thus implemented charged a fixed KWH charge  
4 (commercial rates constantly fluctuate based on usage) and a meter fee of five dollars (at a  
5 time when PGE's meter fee was seven). This arrangement caused BBM to lose roughly four  
6 thousand dollars annually on electrical billing, effectively subsidizing its tenants' electrical  
7 costs.

8 In 1993, Berman began to manage the Park alongside Mr. Jones, with the electric  
9 billing systems Mr. Jones developed. When BBM took over park operations, Berman (as an  
10 officer of BBM) audited all business practices, including electrical billing, and confirmed  
11 that the electrical billing practices, calculations, and allocation of the 16 PGE meters to the  
12 individual sites was proper and legal according to the parameters of several governing  
13 agencies, including the Public Utility Commission, Oregon Housing and Community  
14 Services (aka Oregon MultiFamily), and PGE. BBM, therefore, continued operation of the  
15 RV park with the electrical billing practices originally implemented by Mr. Jones.

16 Over the follow 20 years, these billing practices were reconfirmed several times to  
17 ensure that laws were being followed, including when all Oregon RV parks came under  
18 landlord-tenant law, and after the Marion County lawsuit was filed. Every audit during these  
19 20-plus years of operation, and all government agencies (the Public Utility Commission,  
20 Oregon Housing and Community Services, and PGE) confirmed that BBM's electrical billing  
21 system was best practice and legal. To this day, neither BBM nor either of Debtors have ever  
22 made a dollar in profit from this electrical billing arrangement for tenants, a fact not disputed  
23 by plaintiff's counsel in the Marion County Case, who stated in open court that "we have no  
24 reason to believe Salem RV park has ever made money on utilities."

25 Despite the fact that only the word "Cost" and never the term "kWh" is used in  
26 ORTLA, and most importantly, despite the fact that no tenant has ever paid more than what



1 PGE would have billed them individually, the Marion County Court ruled that because of  
2 BBM's kilowatt hour charging structure, BBM was in violation of the law.

3 On July 29, 2013, under the advice of its legal counsel, Saalfeld Griggs PC, BBM  
4 implemented changes to its electrical billing practices in an effort to mitigate damages by  
5 complying with the demands of the lawsuit. BBM implemented the following billing  
6 changes: (1) the meter fee was removed, (2) the kWh charge was reduced and now varies  
7 monthly, and (3) rents were raised \$20. These changes resulted in little to no increased gross  
8 revenue, but a gross loss on electrical billings of roughly \$15,000 annually. Rents were  
9 raised to partially offset some of these losses and because rents had not been raised at the  
10 RV park for a long time. However, as a result of the changes, plaintiffs amended the  
11 complaint and successfully sued the defendants for rent retaliation.

#### 12 **IV. EVENTS LEADING TO THE BANKRUPTCY FILING**

13 Debtors' bankruptcy filings were precipitated by the general judgment entered in the  
14 Marion County Case and by the accumulated financial losses related thereto. Debtors have  
15 insufficient funds with which to pay the judgment and attorney fees for both plaintiffs and  
16 itself. As a result, Debtors filed for Chapter 11 bankruptcy.

#### 17 **V. SIGNIFICANT POST-PETITION EVENTS**

##### 18 **A. CASH COLLATERAL**

19 Early in the case, B. & J. obtained consent from Columbia Credit Union and court  
20 approval to use cash collateral to pay ongoing Chapter 11 expenses. The Court entered an  
21 Order Authorizing the Use of Cash Collateral and Granting Adequate Protection on  
22 February 6, 2019 [ECF No. 96].

##### 23 **B. REJECTION OF COMMERCIAL LEASE**

24 Upon filing the Chapter 11, B. & J. also obtained court approval to reject the  
25 Commercial Lease between B. & J. and BBM, and to authorize B. & J. to operate the  
26 property as an RV park and self-storage facility in the ordinary course of its business during

1 this bankruptcy proceeding, as more fully described above (“B. & J.’s Business”). A detailed  
2 description of the rejected lease can be found at ECF No. 7 or by contacting counsel for  
3 B. & J.

4 Consistent with rent restrictions imposed by an as-then-impending Oregon law, which  
5 has now been enacted, B. & J. instituted a rent structure that would start to bring rental rates  
6 in line with current market rents while at the same time not increasing rents too much from  
7 the prior owner. B. & J. is also investing to make improvements and repairs to create a  
8 desirable park and storage operation. After court approval, B. & J. hired employees and  
9 commenced operations as the RV park and self-storage business entitled Salem Estates RV  
10 Park and Salem Estates Storage.

### 11 C. RELIEF FROM STAY

12 On or about May 15, 2019, B. & J. and Plaintiffs’ Class Action counsel entered into a  
13 Stipulated Order Granting Limited Relief From Stay [ECF No. 166] (“Relief From Stay  
14 Order”) whereby the parties agreed, and the Court ordered, that the state court proceeding  
15 could continue to its completion at the trial level, and then continue on to resolve any and all  
16 subsequent appeals; provided, however, that any further rulings would not constitute a lien  
17 on any of the B. & J. property or assets, and any payment of any amounts ultimately ruled to  
18 be due and owing would be governed by the Plan of Reorganization.

19 On or about June 21, 2019, Berman and Plaintiffs’ Class Action counsel entered into  
20 a Stipulated Order Granting Limited Relief From Stay [ECF No. 70 (Berman Case)]<sup>2</sup>  
21 (“Berman Relief From Stay Order”) whereby the parties agreed and the Court ordered that  
22 the state court proceeding could continue to its completion at the trial level, and then  
23 continue on to resolve any and all subsequent appeals; provided, however, that any further  
24 rulings would not constitute a lien on any of Berman’s property or assets, and any payment

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25 <sup>2</sup> Reference to documents in the “Berman Case” refer to docket entries in Bankruptcy Case  
26 No. 19-60230-pcm11.

1 of any amounts ultimately ruled to be due and owing would be governed by the Plan of  
2 Reorganization. Additionally, the parties agreed that the Class Action Plaintiffs' judgment  
3 lien would be promptly avoided pursuant to 11 U.S.C. § 547.

4 **D. EMPLOYMENT OF PROFESSIONALS**

5 B. & J. has retained Tonkon Torp LLP as its general counsel in this case. B. & J. also  
6 sought and obtained Bankruptcy Court approval for the employment of (a) Saalfeld Griggs  
7 PC as its special purpose counsel, and (b) Fischer, Hayes, Joye & Allen LLC as its  
8 accountants. B. & J. and Berman also obtained an order authorizing the employment of  
9 Janet M. Schroer as special purpose counsel to represent them as appellate counsel in the  
10 Class Action Case. Ms. Schroer will be paid by the Oregon State Bar Professional Liability  
11 Fund as repair counsel based on the malpractice claim asserted against Saalfeld Griggs by  
12 Debtors.

13 Berman has retained Motschenbacher & Blattner LLP as its general counsel in the  
14 Berman Bankruptcy Case, and as appellate counsel in the Class Action Case. Berman also  
15 sought and obtained Bankruptcy Court approval for the employment of Fischer, Hayes,  
16 Joye & Allen LLC as his accountant. Berman may seek authority to employ alternate  
17 appellate counsel for the Class Action Case if appropriate.

18 **VI. ASSETS AND LIABILITIES**

19 **A. ASSETS**

20 **1. B. & J.'s Real Property**

21 As described above, B. & J.'s principal asset is the Real Property containing the 158-  
22 unit RV park and 243-unit self-storage facility on a 9.06-acre parcel both located at 4490  
23 Silverton Road, N.E., Salem, Oregon. Debtors estimate that the value of the Real Property  
24 was approximately \$5,000,000 as of the B. & J. Petition Date.

25 As of the Petition Date, B. & J. held bare legal title to the Property and the RV Park  
26 and Storage business was operated by Better Business Management ("BBM"). BBM was in

1 default under the lease with B. & J. and was insolvent as a result of the Class Action  
2 judgment entered against it. Thus, as of the Petition Date, B. & J. owned Property with an  
3 insolvent tenant that was in default. Such circumstances depressed the value of the Property.  
4 In addition, the Property had been underperforming given that BBM had been charging  
5 under-market rates. Further, the Property had significant amounts of deferred maintenance,  
6 which further depressed its value. Although a prior appraisal had valued the Property at one  
7 point at approximately \$6 million, B. & J.'s owner believes that appraisal was too high and  
8 given the present state of the Property as of the Petition Date, a \$5 million valuation was  
9 more accurate. In any event, the Property value is expected to increase under the Plan since  
10 B. & J. has taken possession of the Property and is now running an RV Park and Storage  
11 business that it expects will be able to generate sufficient revenue to make the needed repairs  
12 and improvements to increase the Property value during the life of the Plan. Moreover, if  
13 B. & J. is not able to generate sufficient funds to pay all Allowed Claims in full, then the  
14 Property will be liquidated. Upon liquidation, the value will be determined by the  
15 marketplace.

## 16 **2. Berman's Real Property**

17 Berman co-owns, with his wife, real property and a single family home in Salem,  
18 Oregon. Legal title to the home is held by the Berman Living Trust Dated October 21, 1997.  
19 Berman estimates that the total value of the residence was approximately \$568,060 as of the  
20 Berman Petition Date. Therefore, Berman estimates that the value of his 50% interest in the  
21 residence was approximately \$284,030 as of the Berman Petition Date.

## 22 **3. Personal Property**

23 As of the Petition Date, B. & J.'s hard assets consisted of a 2017 Chevy suburban and  
24 a 2001 New Holland tractor, as well as some miscellaneous office furniture and equipment  
25 with little market value. B. & J. had cash accounts as of the Petition Date in the total amount  
26 of \$114,209.26, and also had a receivable from Berman in the amount of \$61,000. This

1 original amount was reduced prepetition by \$29,730, when B. & J. acquired Mr. and  
2 Ms. Berman's debt and collateral rights against BBM and its assets. After the Court order  
3 rejecting B. & J.'s lease with BBM, B. & J. acquired the personal property of BBM in  
4 satisfaction of that lien. The value of this additional property acquired postpetition is  
5 \$29,730.

6 B. & J. has a receivable from William Lloyd Developments, Inc. in the total face  
7 amount of \$1,837,322, of which \$937,322 is a doubtful or uncollectable amount. This  
8 receivable is further subject to reduction based on a debt of \$350,164 owed by B. & J. to  
9 William Lloyd Developments, Inc. A list of all of B. & J.'s assets can be found at  
10 Schedule A/B [ECF No. 89]. The collection of the full amount of the receivable from  
11 William Lloyd is doubtful since in the past 11 years William Lloyd has sold only one  
12 undeveloped lot. If payment were demanded immediately, the William Lloyd assets would  
13 need to be sold at depressed values resulting in a lower liquidation value and less funds to  
14 pay B. & J.

15 As of the Berman Petition Date, Berman's hard assets consisted of miscellaneous  
16 household goods and furnishings Berman co-owns with his wife. Berman also had checking  
17 accounts worth \$35,937.53, and individual retirement accounts that Berman has claimed as  
18 fully exempt. Berman also owns stock or membership interests in the following entities:  
19 (a) 50% of the outstanding stock of B. & J., (b) 50% of the outstanding stock of BBM,  
20 (c) 28% of the outstanding stock of William Lloyd Investments, Inc., and (d) 20% of the  
21 outstanding membership interest in B. & J. Investments LLC. Berman is also owed  
22 \$107,690.33, including interest, in relation to a loan that he and his wife made to William  
23 Lloyd Investments, Inc. A list of Berman's assets can be found in Berman's Amended  
24 Schedule A/B [ECF No. 44 (Berman Case)].

25 B. & J. is also owed reimbursement from BBM for legal fees (\$302,603.25 paid and  
26 \$293,354 unpaid) incurred in the Marion County Case and owed under an indemnity clause

1 in BBM's Lease with B. & J. — B. & J. does not expect to collect this amount as BBM is  
2 now out of business and has no assets.

3 Debtors also have potential malpractice claims against Saalfeld Griggs LLP for legal  
4 advice that resulted in the Class Action retaliation liability claim of \$964,450, plus attorney  
5 fees to be awarded, and legal advice that resulted in disregard of corporate status that resulted  
6 in the class action judgment liability of \$4,864,951 (which includes the retaliation liability  
7 claim of \$964,450), plus attorney fees to be awarded. Debtors have made demand on  
8 Saalfeld Griggs for these claims and are negotiating a tolling agreement. Debtors dispute  
9 their liability to the Class Action Creditors but if such liability is upheld on appeal, Debtors  
10 believe they have valid claims against Saalfeld Griggs since Debtors relied upon and  
11 followed Saalfeld Griggs' advice in conducting its business in the manner in which the state  
12 court found to result in the retaliation liability and the successor liability of both Debtors.  
13 Debtors intend to file an objection to Saalfeld Griggs' prepetition Claim and, as a result,  
14 expect that no payments will be made on that Claim pending the conclusion of the  
15 Class Action appeals and resolution of any malpractice claims against Saalfeld Griggs.

16 Berman may also have a claim against his minor grandchildren, for gifts made to  
17 those minors' college savings funds. Berman and his wife jointly contributed \$21,740.57,  
18 half of which was from Berman. As a result, Berman's potential claim equals \$10,870.29,  
19 which has been included in Berman's liquidation analysis attached as Exhibit 3.

## 20 **B. LIABILITIES**

### 21 **1. Columbia Credit Union**

22 According to the proof of claim filed by Columbia Credit Union, the amount of debt  
23 owing to Columbia Credit Union as of the Petition Date is \$2,225,037.38 in principal, plus  
24 accrued interest in the amount of \$918.05, and \$3,412.50 in prepetition attorney fees and  
25 costs. To secure its obligations, on September 11, 2015, B. & J. granted Columbia Credit  
26 Union a security interest in the Real Property located at 4490 Silverton Road NE, Salem,

1 Oregon. Additionally, Berman executed and delivered a personal guaranty. A copy of  
2 Columbia Credit Union's Deed of Trust and the Berman Guaranty are attached to its Proof of  
3 Claim [Claim 3 (B. & J. Case)].

## 4 **2. Marion County Case Claim**

5 A General Judgment was entered against Debtor, BBM, and Mr. Berman on  
6 October 31, 2018, in the sum of \$3,900,501 on the electrical charge claims to the Main  
7 Class members, plus \$964,450 to the Retaliation Sub-Class members. In addition, plaintiffs  
8 have requested attorney fees of \$1,100,000 and costs of \$52,378.39. Debtors expect they  
9 will prevail in the appeal of the Marion County Case, and that as a result all creditors except  
10 the Class Action Claim plaintiffs will be paid in full. If Debtors do not prevail in the appeal  
11 of the Marion County Case, B. & J. will pursue the malpractice claims against Saalfeld  
12 Griggs and if sufficient recovery is not made therefrom, will then liquidate its assets.

## 13 **3. Unsecured and Class Action Creditors**

14 The total amount of Unsecured Claims scheduled by B. & J. or filed by Creditors  
15 against B. & J. is approximately \$751,182.49 (excluding claims filed by the Class Action  
16 Creditors which were listed as disputed). The total filed claims against B. & J. is  
17 approximately \$7,845,738.24 including the Class Action Claims. This amount excludes any  
18 duplication for scheduled and filed claims and does not include anticipated costs and attorney  
19 fees to be awarded to the Class Action Plaintiffs in the Class Action Case.

20 The total amount of Unsecured Claims scheduled by Berman or filed by Creditors  
21 against Berman is approximately \$355,785.49 (excluding the Columbia Guaranty Claim,  
22 which is to be paid by B. & J., and claims filed by the Class Action Creditors which were  
23 listed as disputed). The total amount of filed claims against Berman is approximately  
24 \$7,763,541.53. This amount excludes any duplication for scheduled and filed claims.  
25  
26

1 **VII. DESCRIPTION OF PLAN**

2 **A. BRIEF EXPLANATION OF CHAPTER 11**

3 Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code.  
4 Under Chapter 11, a debtor is authorized to reorganize its business for the benefit of itself, its  
5 creditors, and its equity holders. Confirmation of a plan of reorganization is the principal  
6 objective of a Chapter 11 reorganization case. A plan of reorganization sets forth the means  
7 for satisfying claims against, and interests in, a debtor. Confirmation of a plan of  
8 reorganization by a bankruptcy court makes the plan binding upon the debtor, any issuer of  
9 securities under the plan, any person acquiring property under the plan, and any creditor and  
10 any equity holder of the debtor. Subject to certain limited exceptions provided by the  
11 Bankruptcy Code, and except as specifically provided in the Plan of Reorganization, the  
12 confirmation order discharges debtor from any debt that arose prior to the date of such  
13 confirmation and order and substitutes therefore the obligations specified in the plan.

14 **B. SOLICITATION, CLASSIFICATION, AND TREATMENT OF**  
15 **CLAIMS AND EQUITY SECURITIES**

16 **1. General**

17 Pursuant to Section 1123(a)(1) of the Bankruptcy Code, a Plan of Reorganization  
18 must designate classes of Claims and classes of Interests. The Plan classifies all Claims and  
19 Interests into four classes. The classification of Claims and Interests is made for the purpose  
20 of voting on the Plan and making distributions thereunder, and for ease of administration of  
21 the Plan. A Claim or Interest is classified in a particular Class only to the extent the Claim or  
22 Interest qualifies within the description of that Class, and is classified in a different Class to  
23 the extent the Claim or Interest qualifies within the description of such different Class. A  
24 Claim or Interest is entitled to vote in a particular Class and to receive distributions in such  
25 Class only to the extent such Claim or Interest is an Allowed Claim or Allowed Interest in  
26 that Class and has not been paid prior to the Effective Date. Under the Plan, a Claim or



1 Interest is an Allowed Claim against, or an Allowed Interest in, Debtor to the extent that (a) a  
2 proof of the Claim or Interest was (1) timely filed, or (2) deemed filed under applicable law  
3 by reason of an order of the Bankruptcy Court; or (b) scheduled by Debtor on its Schedules  
4 of Liabilities as neither contingent, unliquidated, or disputed; and (c) (i) no party-in-interest  
5 has filed an objection within the time fixed by the Bankruptcy Court, (ii) the Claim or  
6 Interest is allowed by Final Order; or (iii) with respect to an application for compensation or  
7 reimbursement of an Administrative Expense Claim, the amount of the Administrative  
8 Expense Claim has been approved by the Bankruptcy Court.

## 9 **2. Unclassified Claims**

10 Administrative Expense Claims and Priority Tax Claims are not classified. An  
11 Administrative Expense Claim is a Claim against Debtors constituting an expense of  
12 administration of the Bankruptcy Case allowed under Section 503(b) of the Bankruptcy Code  
13 including, without limitation, the actual and necessary costs and expenses of preserving the  
14 estate and operating Debtors' business during the Bankruptcy Case; claims for the value of  
15 goods received by Debtors within 20 days before the Petition Date sold in the ordinary  
16 course of business; any indebtedness or obligations incurred by Debtors during the pendency  
17 of the Bankruptcy Case in connection with the provision of goods or services to Debtors;  
18 compensation for legal and other professional services and reimbursement of expenses; and  
19 statutory fees payable to the U.S. Trustee.

20 A "Priority Tax Claim" is a Claim of a governmental unit of the kind entitled to  
21 priority under Section 507(a)(8) of the Bankruptcy Code or that would otherwise be entitled  
22 to priority but for the Secured status of the Claim. Each holder of an Allowed Priority Tax  
23 Claim shall be paid by Reorganized Debtors within 30 days following the Effective Date or  
24 the date the Claim is Allowed, whichever is sooner, the full amount of its Allowed Priority  
25 Tax Claim as allowed by 11 U.S.C. § 1129(a)(9)(C) and (D). The IRS has filed a Priority  
26

1 Tax Claim against B. & J. in the amount of \$336.82, and against Berman in the amount of  
2 \$100.

3 Pursuant to the Plan of Reorganization, Administrative Expense Claims will be paid  
4 in full on the later of the Effective Date or the date on which any such Administrative  
5 Expense Claim becomes an Allowed Claim unless such holder shall agree to a different  
6 treatment of such Claim (including, without limitation, any different treatment that may be  
7 provided for in any documentation, statute, or regulation governing such Claim). However,  
8 the Administrative Expense Claims representing liabilities incurred in the ordinary course of  
9 business (including amounts owed to vendors and suppliers that have sold goods or furnished  
10 services to Debtors after the Petition Date), if any, will be paid in accordance with the terms  
11 and conditions of the particular transactions and any other agreements relating thereto.  
12 Debtor will include the estimated amount of such expenses in the Report of Administrative  
13 Expense Claims to be filed prior to the hearing on confirmation.

### 14 3. Classified Claims

15 The following summary of distributions under the Plan to Classified Claims does not  
16 purport to be complete and is subject to, and is qualified in its entirety by reference to, the  
17 Plan included herewith.

18 (a) Class 1 (Columbia Credit Union's Secured Claim Against  
19 B. & J.). Columbia Credit Union ("Columbia") has a first-position security interest in  
20 B. & J.'s real property located at 4490 Silverton Road NE, Salem, Oregon, to secure its  
21 Allowed Secured Claim. Columbia will retain its interest in its Collateral with the same  
22 priority that it had on the Petition Date. Columbia will be paid the full amount of its Allowed  
23 Secured Claim in accordance with the existing terms of its loan to Debtor except for the  
24 changes to terms and covenants as detailed in the Plan. The payments to Columbia from  
25 B. & J. will be approximately \$14,080 per month.  
26

1 (b) Class 2 (Columbia's Unsecured Guaranty Claim Against  
2 Berman). Columbia has an unsecured claim against Berman pursuant to his personal  
3 guaranty of B. & J.'s debt to Columbia. Berman will remain liable to Columbia under the  
4 personal guaranty in accordance with the existing terms of Columbia's loan to B. & J. except  
5 for the changes to terms and covenants as detailed in the Plan.

6 (c) Class 3 (Quicken Loans' Secured Claim Against Berman).  
7 Quicken Loans, Inc. ("Quicken Loans") has a first-position security interest in Berman's  
8 personal residence in Salem, Oregon, to secure its Allowed Secured Claim. The Class 3  
9 claim is unimpaired and not entitled to vote on the Plan. Quicken Loans will be paid the full  
10 amount of its Allowed Secured Claim in accordance with the existing terms of its loan to  
11 Berman.

12 (d) Class 4 (General Unsecured Claims Against B. & J.). Each  
13 Class 4 Unsecured Claim against B. & J. will be paid in full, together with interest at the  
14 federal judgment rate in effect on the Effective Date, from and after the Effective Date, as  
15 follows: (i) commencing on the first day of the first full month following the Effective Date,  
16 General Unsecured Creditors will be paid monthly payments of interest only, at the federal  
17 judgment rate, for 24 months; and (ii) commencing on the first day of the 25th month  
18 following the Effective Date, General Unsecured Creditors will be paid the full balance of  
19 their claims in equal amortizing monthly payments, including principal and interest at the  
20 federal judgment rate, for the next 36 months; provided, however, that if the appeal of the  
21 Class Action Case is not successful and funds are due and owing to the Class 6 Claimants  
22 under a Final Order, then payments made to Class 4 Claims up to that point will be  
23 recharacterized as payments of principal only and Class 4 Claims shall share pro rata in the  
24 liquidation of assets described in Class 6 below on a pari passu basis with Class 6 Unsecured  
25 Claims, with no further payments being made to Class 4 Claims until such time as payments  
26

1 to Class 6 Unsecured Claims have caught up and are on par with the percentage previously  
2 received by Class 4 Claims.

3 (e) Class 5 (General Unsecured Claims Against Berman). Each  
4 General Unsecured Claim against Berman will be paid first from B. & J. under Class 4, and  
5 any balance remaining shall be paid its pro rata share of funds held in the “Berman  
6 Unsecured Claims Fund,” which shall be created and funded by Berman from his earnings  
7 after the Effective Date. The amount to be paid by Berman into the Berman Unsecured  
8 Claims Fund is \$1,000 per month for five years, or until \$60,000 has been deposited by  
9 Berman, or such other amount as is required by the Bankruptcy Court. The Class 5 creditors’  
10 pro rata share of the Berman Unsecured Claims Fund shall be calculated from the total  
11 amount of Class 5 and Class 7 claims.

12 (f) Class 6 (Class Action Claims Against B. & J.). Each holder of  
13 an Allowed Claim as a result of a Final Order entered in the Class Action Litigation and  
14 appeals will be paid the full amount ultimately awarded by the Court, if any, if B & J. has  
15 sufficient assets to make such payments and, if not, from the pro rata Net Proceeds from the  
16 closing down/liquidation and sale of B. & J.’s business and assets, as follows:

17 Upon entry of a Final Order on the Class Action Claims, Reorganized B. & J.  
18 will pay Allowed Class Action Claims, whether Secured or Unsecured, within  
19 12 months after any order entered in the Class Action Case becomes a Final  
20 Order. To the Extent Reorganized B. & J. does not have sufficient funds to  
21 pay the Allowed Class 6 Claims from available cash, then Reorganized  
22 B. & J. shall first seek to pursue the malpractice claims against Saalfeld  
23 Griggs in order to recover the full amounts owing to the Class Action  
24 Claims. If recovery against Saalfeld Griggs is not successful, then  
25 Reorganized B. & J. will seek to refinance the Real Property to generate Net  
26 Proceeds in a sufficient amount to pay the Allowed Class 6 Claims. If

1 Reorganized B. & J. is unable to refinance the Real Property, then  
2 Reorganized B. & J. shall proceed to sell the Real Property and liquidate all its  
3 remaining assets, with the Net Proceeds from the Real Property to be paid first  
4 in full satisfaction of the Allowed Class 6 Secured Claims and thereafter to the  
5 Allowed Class 4 and Class 6 Unsecured Claims. If the Net Proceeds are  
6 insufficient to pay Allowed Unsecured Claims in full, then each Unsecured  
7 Claimant shall be paid its pro rata share of the amount owed to all Allowed  
8 Class 4 and 6 Unsecured Claims. Proceeds from the malpractice claims  
9 against Saalfeld Griggs, Net Proceeds of the refinancing, or Net Proceeds  
10 from the sale of the Real Property and liquidation of assets shall first be paid  
11 to the Class 6 Unsecured Claims until such payments equal the same  
12 percentage that Class 4 Claims have received to date, and thereafter Class 4  
13 and Class 6 Unsecured Claims shall be paid from available funds on a pro rata  
14 basis.

15 (g) Class 7 (Class Action Claims Against Berman). Each holder of  
16 an Allowed Claim as a result of a Final Order entered in the Class Action Litigation and  
17 appeals will first be paid the full amount ultimately awarded by the Court, if any, if B & J.  
18 has sufficient assets to make such payments and, if not, from the pro rata proceeds from the  
19 closing down/liquidation and sale of B. & J.'s business and assets. Any Class 7 Claims that  
20 remain after payment is made by B. & J. shall be paid a pro rata share of the Berman  
21 Unsecured Claims Fund described above. The Class 7 creditors' pro rata share of the  
22 Berman Unsecured Claims Fund shall be calculated from the total amount of Class 5 and  
23 Class 7 claims.

24 (h) Class 8 (Interests in B. & J.). The Plan provides that holders of  
25 Class 8 Interests will retain their interest in Reorganized B. & J., except in the event there are  
26 insufficient funds to pay Creditors, in which case the interest will be of no value.

(i) Class 9 (Berman's Interest in Estate). The Plan provides that Berman shall retain his interest in the property of his bankruptcy estate.

**C. ADMINISTRATIVE EXPENSES**

B. & J. has retained the following professionals: (1) Tonkon Torp LLP as its general counsel in this case, (2) Saalfeld Griggs PC as its special purpose counsel, and (3) Fischer, Hayes, Joye & Allen LLC as its accountants. The total amount of Administrative Expense Claims is uncertain at this time. It is anticipated that some professionals may agree to defer payment of their Administrative Claim, if necessary. A statement of professional fees incurred in this case will be filed with the Court prior to the confirmation hearing.

Berman has retained the following professionals: (1) Motschenbacher & Blattner LLP as his general bankruptcy counsel in this case, and as appellate counsel in the Class Action, and (2) Fischer, Hayes, Joye & Allen LLC as his accountants. The total amount of Administrative Expense Claims is uncertain at this time. It is anticipated that some professionals may agree to defer payment of their Administrative Claim, if necessary. A statement of professional fees incurred in this case will be filed with the Court prior to the confirmation hearing.

**D. EXECUTORY CONTRACTS**

The Bankruptcy Code gives Debtors the right, after commencement of their Chapter 11 Cases, subject to approval of the Bankruptcy Court, to assume or reject executory contracts and unexpired leases. Generally, an "executory contract" is a contract under which material performance (other than the payment of money) is still due by each party. The Plan provides for the assumption by debtors of all executory contracts and unexpired leases that are not expressly rejected or subject to a motion for rejection filed on or before the Confirmation Date.

If an executory contract or unexpired lease is or has been rejected, the other party to the agreement may file a Proof of Claim for damages resulting from such rejection. The Plan

1 provides that a Proof of Claim with respect to any such Claim must be filed within 30 days of  
2 approval of the Bankruptcy Court of the rejection of the relevant executory contract or  
3 unexpired lease. Any such Claim shall constitute a Class 2 Claim to the extent such Claim is  
4 finally treated as an Allowed Claim. To the extent a debtor rejects an unexpired lease of  
5 nonresidential real property, the Claim for damages resulting from such rejection will be  
6 limited to the amount allowed under the Bankruptcy Code.

7 Upon assumption of an executory contract or unexpired lease, debtors must cure or  
8 provide adequate assurance of prompt cure of any monetary defaults. The Plan provides that  
9 Reorganized Debtors will promptly cure all monetary defaults.

## 10 **E. EFFECT OF CONFIRMATION**

### 11 **1. Binding Effect**

12 The treatment of, and consideration received by, holders of Allowed Claims and  
13 Interests pursuant to the Plan will be in full satisfaction of their respective Claims against or  
14 Interests in Debtors. The Confirmation Order shall bind Debtors and any Creditor, and  
15 discharge Debtors from any liability that arose before the Effective Date as provided in  
16 Sections 524 and 1141 of the Bankruptcy Code, and any debt and liability of a kind specified  
17 in Sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether or not (a) a proof of  
18 claim based on such Creditor's debt or liability is Filed or deemed Filed under Section 501 of  
19 the Bankruptcy Code, (b) a Claim based on such debt or liability is Allowed, or (c) the holder  
20 of the Claim based on such debt or liability has accepted the Plan.

### 21 **2. Revesting, Operation of Business**

22 All property of the bankruptcy estates shall revert in each respective Reorganized  
23 Debtor on the Effective Date free and clear of all rights, claims, liens, charges,  
24 encumbrances, and interests, except as otherwise specifically provided in the Plan. Except as  
25 otherwise set forth in the Plan, there are no limitations or restrictions on the post-  
26 confirmation activities or operations of Debtors.

1                                   **3.       Injunction**

2           The effect of confirmation shall be as set forth in Section 1141 of the Bankruptcy  
3   Code. Except as otherwise provided in the Plan, prior order of the Bankruptcy Court, or in  
4   the Confirmation Order, confirmation of the Plan shall act as a permanent injunction  
5   applicable to entities against (a) the commencement or continuation, including the issuance  
6   or employment of process, of a judicial, administrative, or other action or proceeding of any  
7   kind against Debtors or Reorganized Debtors that was or could have been commenced before  
8   entry of the Confirmation Order; (b) the enforcement, attachment, collection, or recovery  
9   against Reorganized Debtors or their assets of any judgment, award, decree, or order  
10   obtained before the Petition Date; (c) any act to obtain possession of or to exercise control  
11   over, or to create, perfect, or enforce a lien upon all or any part of the assets of Reorganized  
12   Debtors; (d) asserting any setoff or right of subrogation or recoupment of any kind against  
13   any obligation due to Debtors, Reorganized Debtors, or their property; and (e) proceeding in  
14   any manner in any place whatsoever that does not conform to, does not comply with, or is  
15   inconsistent with the provisions of the Plan or the Confirmation Order. Neither the  
16   injunction nor any provision of the Plan prohibits or otherwise overrides the Stipulated Relief  
17   From Stay Order which allows the Marion County Case to proceed to completion in state  
18   court, including all appeals.

19                                   **4.       Event of Default**

20           Any material failure by Reorganized Debtors to perform any term of the Plan, which  
21   failure continues for a period of 15 Business Days following receipt by Reorganized Debtors  
22   of written notice of such default from the holder of an Allowed Claim to whom performance  
23   is due, shall constitute an Event of Default. Upon the occurrence of an Event of Default, the  
24   holder of an Allowed Claim to whom performance is due shall have all rights and remedies  
25   granted by law, the Plan, or any agreement between the holder of such Claim and Debtors or  
26



1 Reorganized Debtors. An Event of Default with respect to one Claim shall not be an Event  
2 of Default with respect to any other Claim.

3 **5. Modification of Plan; Revocation or Withdrawal of Plan**

4 Subject to Section 1127 of the Bankruptcy Code, Debtors reserve the right to alter,  
5 amend, modify, or withdraw the Plan before its substantial consummation so long as the  
6 treatment of holders of Claims and Equity Security Holders under the Plan are not adversely  
7 affected.

8 **6. Retention of Jurisdiction**

9 Notwithstanding entry of the Confirmation Order, the Court shall retain jurisdiction  
10 of this Chapter 11 Case pursuant to and for the purposes set forth in Section 1127(b) of the  
11 Bankruptcy Code and:

12 (a) to classify the Claim or interest of any Creditor or stockholder,  
13 reexamine Claims or Interests which have been owed for voting purposes, and determine any  
14 objections that may be Filed to Claims or Interests;

15 (b) to determine requests for payment of Claims entitled to priority  
16 under Section 507(a)(1) of the Bankruptcy Code, including compensation and reimbursement  
17 of expenses in favor of professionals employed at the expense of the Estates;

18 (c) to avoid liens, transfers, or obligations, or to subordinate  
19 Claims under Chapter 5 of the Bankruptcy Code;

20 (d) to approve the assumption, assignment, or rejection of an  
21 executory contract or an unexpired lease pursuant to this Plan;

22 (e) to resolve controversies and disputes regarding the  
23 interpretation of this Plan;

24 (f) to implement the provisions of this Plan and enter orders in aid  
25 of confirmation;

(g) to adjudicate adversary proceedings and contested matters pending or hereafter commenced in this Chapter 11 Case; and

(h) to enter a final decree closing this Chapter 11 proceeding.

#### **7. United States Trustee Fees**

Fees payable by Debtors under 28 U.S.C. § 1930, or to the Clerk of the Bankruptcy Court, will be paid in full in Cash on the Effective Date. All quarterly fees due to the United States Trustee pursuant to 28 USC § 1930(a), including fees due for any partial quarter, accruing after the Effective Date shall be paid by the Reorganized Debtors as and when they become due and will be based on the Reorganized Debtors' total disbursements, including ordinary course of business disbursements as well as disbursements made to Claimants under this Plan. Such fee obligations will not terminate until this Case is converted or dismissed, or until this Case is no longer pending upon entry of a Final Order closing this Case, whichever first occurs, and all United States Trustee fees, including any such fees accrued in any partial quarter, shall be paid as a condition precedent prior to entry of an order closing the case. After the Effective Date, the Reorganized Debtors shall file with the Court a post-confirmation monthly financial report for each month, or portion thereof, that the case is open or during any period of time that the case is reopened. The monthly financial report shall include a statement of all disbursements made during the course of the month, whether or not pursuant to the Plan. All United States Trustee fees, including any such fees accrued in any partial quarter, shall also be paid as a condition precedent prior to entry of a Final Decree.

#### **VIII. LIQUIDATION ANALYSIS**

A Plan of Reorganization cannot be confirmed unless the Bankruptcy Court finds that the Plan is in the "best interest of creditors" or holders of Claims against, and Equity Security in, Debtors subject to such plan. The best interest test is satisfied if a plan provides each dissenting or non-voting member of each impaired Class with a recovery not less than the

1 recovery such member would receive if each Debtor was liquidated in a hypothetical case  
2 under Chapter 7 of the Bankruptcy Code by a Chapter 7 Trustee. Debtors believe the holders  
3 of impaired Claims will not receive less than they would receive under a Chapter 7  
4 liquidation. In applying the “best interest” test, the Bankruptcy Court would ascertain the  
5 hypothetical recovery in a Chapter 7 proceeding to Secured Creditors, priority claimants,  
6 General Unsecured Creditors, and Equity Interest Holders. The hypothetical Chapter 7  
7 recoveries would then be compared with the distribution offered to each Class of Claims or  
8 Equity Security Holders under the Plan to determine that the Plan satisfied the “best interest”  
9 test set forth in the Bankruptcy Code.

10 A Chapter 7 liquidation of B. & J.’s case would result in the immediate cessation of  
11 B. & J.’s operations. Substantially all assets would be liquidated and distributed to the  
12 Secured Creditors, with Columbia Credit Union likely realizing its full \$2,225,037 secured  
13 claim amount plus default interest, costs, and fees, and the remaining General Unsecured,  
14 Litigation, and Equity Classes realizing less than the amount proposed under the Plan.

15 A Chapter 7 liquidation of Berman’s case would result in the immediate cessation of  
16 Berman’s primary source of income. Berman’s non-exempt assets would be liquidated and  
17 approximately \$43,703.33 would be available for distribution to all creditors, including  
18 Columbia’s \$2,225,037 claim on Berman’s personal guaranty. Calculations for a  
19 hypothetical Berman liquidation are set forth on the Liquidation Analysis attached hereto as  
20 **Exhibit 3**. The amount available in a Berman liquidation is less than the Berman Unsecured  
21 Claims Fund, and thus General Unsecured, Class Action, and Equity Classes would receive  
22 less in a Chapter 7 than the amount proposed under the Plan.

23 **IX. POSSIBLE U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

24 CREDITORS AND INTEREST HOLDERS CONCERNED WITH HOW THE  
25 PLAN MAY AFFECT THEIR TAX LIABILITY SHOULD CONSULT WITH THEIR  
26 OWN ACCOUNTANTS, ATTORNEYS, AND/OR ADVISORS.

1 The following discussion summarizes in general terms certain federal income tax  
2 consequences of implementation of the Plan based upon existing provisions of the Internal  
3 Revenue Code of 1986, as amended (the "Internal Revenue Code"), court decisions, and  
4 current administrative rulings and practice. This summary does not address the federal  
5 income tax consequences of the Plan to holders of priority or secured claims, nor does it  
6 address any state, local, or foreign tax matters, or the federal income tax consequences to  
7 certain types of creditors (including financial institutions, life insurance companies, tax  
8 exempt organizations, and foreign taxpayers) to which special rules may apply. No rulings  
9 or opinions have been or will be requested from the Internal Revenue Service with respect to  
10 any of the tax aspects of the Plan.

11 THIS ANALYSIS DOES NOT ADDRESS THE TAX IMPLICATIONS OF THE  
12 PLAN TO ANY SPECIFIC CREDITOR. Substantial differences in the tax implications are  
13 likely to be encountered by creditors because of the difference in the nature of their Claims,  
14 taxpayer status, method of accounting, and the impact of prior actions they may have taken  
15 with respect to their Claims.

16 The following are the anticipated tax consequences of the Plan.

17 **A. TAX CONSEQUENCES TO DEBTORS**

18 Debtors do not anticipate any extraordinary or unusual tax consequences because all  
19 claims are expected to be paid in full. Debtors will experience ordinary income from  
20 continued operations and earnings, and will be entitled to deduct business expenses for any  
21 business related and interest expenses. Debtors do not anticipate any cancellation of debt  
22 income. In the event B. & J. sells its real property, B. & J. shall pay any applicable capital  
23 gains taxes that result from the sale.

24 **B. GENERAL TAX CONSEQUENCES ON CREDITORS**

25 Creditors will likely not experience any unusual or extraordinary tax consequence  
26 following Confirmation of the Plan. Payments will be treated in the same manner as they

1 were treated before Confirmation of the Plan. As discussed above, the effect of the Plan on  
2 specific creditors will depend on specific financial information relative to such creditor and  
3 that is unknown to Debtors. As a result, the tax implications to specific creditors cannot be  
4 completely described herein.

5 EACH HOLDER IS URGED TO CONSULT SUCH HOLDER'S OWN TAX  
6 ADVISOR AS TO THE CONSEQUENCES OF THE PLAN TO SUCH HOLDER UNDER  
7 FEDERAL AND APPLICABLE STATE, LOCAL, AND FOREIGN TAX LAWS.  
8 DEBTORS AND DEBTORS' COUNSEL EXPRESS NO OPINION AS TO THE TAX  
9 CONSEQUENCES OF THE PLAN OR THE EFFECT THEREOF ON ANY CLAIMANT.

10 **X. ACCEPTANCE AND CONFIRMATION OF THE PLAN**

11 **A. CONFIRMATION HEARING**

12 The Bankruptcy Court has scheduled a hearing on confirmation of the Plan on  
13 \_\_\_\_\_, 2019 at \_\_\_\_m Pacific time. The hearing will be held at the  
14 U.S. Bankruptcy Court for the District of Oregon, 1050 SW Sixth Avenue, #700, Portland,  
15 Oregon in Courtroom No. \_\_\_\_\_, before the Honorable \_\_\_\_\_, United States  
16 Bankruptcy Judge. At that hearing, the Bankruptcy Court will consider whether the Plan  
17 satisfies the various requirements of the Bankruptcy Code, including whether it is feasible  
18 and whether it is in the best interest of Creditors and Equity Security Holders of Debtors.  
19 Debtors will submit a report to the Bankruptcy Court prior to the hearing concerning the  
20 votes for acceptance or rejection of the Plan by the parties entitled to vote thereon. Any  
21 objection to confirmation of the Plan must be timely filed on or before \_\_\_\_\_,  
22 2019 to be considered by the Court.

23 **B. REQUIREMENTS OF CONFIRMATION**

24 At the hearing on confirmation, the Bankruptcy Court will determine whether the  
25 provisions of Section 1129 of the Bankruptcy Code have been satisfied. If all of the  
26 provisions of Section 1129 are met, the Bankruptcy Court may enter an order confirming the

1 Plan. Debtor believes the Plan satisfies all the requirements of Chapter 11 of the Bankruptcy  
2 Code, that it has complied or will have complied with all of the requirements of Chapter 11,  
3 and that the Plan has been proposed and is made in good faith.

4 With respect to Berman's Plan, the "Absolute Priority Rule" will apply in the event  
5 that all of the following occur: (1) Debtors are unsuccessful on their appeal, (2) the Class  
6 Action Creditors do not accept the Plan, (3) the Class Action Claims are not fully paid by  
7 B. & J., and (4) the remainder of the Class Action Claims are not paid in full from the  
8 Berman Unsecured Claims Fund. The Absolute Priority Rule provides that unsecured  
9 creditors in a dissenting impaired class must be satisfied in full before the debtor is allowed  
10 to retain any property under the plan. In Berman's case, Berman proposes to retain  
11 approximately \$97,665.13 of non-exempt property. Specifically, the non-exempt portion of  
12 equity in his residence, and the amount of cash Berman held on hand and in his checking  
13 account on the Petition Date. In the event the Absolute Priority Rule applies, Berman  
14 proposes to obtain a loan from family or from a financial institution to pay the Class Action  
15 Claims the lesser of \$98,000, or the amount needed to pay the remaining balance of the Class  
16 Action Claims. See Section 7.7 of the Plan.

#### 17 **C. CRAMDOWN**

18 A Court may confirm a Plan, even if it is not accepted by all impaired classes, if the  
19 Plan has been accepted by at least one impaired class of claims and the Plan meets the  
20 cramdown requirements set forth in Section 1129(b) of the Bankruptcy Code. In the event  
21 any impaired Class of Claims does not accept the Plan, Debtor hereby requests the  
22 Bankruptcy Court to confirm the Plan in accordance with Section 1129(b) of the Bankruptcy  
23 Code or otherwise permit Debtors to modify the Plan.

#### 24 **D. FEASIBILITY**

25 Debtors believe that confirmation of the Plan is not likely to be followed by the  
26 liquidation of either of the Reorganized Debtors or a need for a further financial

1 reorganization of Reorganized Debtors. The projections of B. & J.'s post-confirmation  
2 business, attached hereto as **Exhibit 1**, show sufficient earnings and cash flow from  
3 operations to support and meet the ongoing financial needs of Reorganized B. & J. The  
4 projections indicate that the Plan as proposed by Debtors is feasible and that Reorganized  
5 Debtors will be financially viable after confirmation of the Plan or B. & J. shall liquidate.  
6 The ultimate payout to the Class Action Creditors will be dependent on the result of the state  
7 court appeals. If the Class Action Creditors prevail in full, then the likely result is that  
8 B. & J. will be liquidated. The Plan provides for such a liquidation and, as such, it is feasible  
9 even if Debtors do not prevail on the appeal.

10 **E. CONFIRMATION REQUIREMENTS FOR INDIVIDUAL DEBTOR**

11 To confirm the Plan, the Court must find that "the value of the property to be  
12 distributed under the plan is not less than the projected disposable income of Debtor (as  
13 defined in Section 1325(b)(2)) to be received during the five-year period beginning on the  
14 date the first payment is due under the Plan, or during the period for which the Plan provides  
15 payments, whichever is longer." 11 U.S.C. § 1129(a)(15)(B). The Plan proposes to pay  
16 Berman's creditors from the Berman Unsecured Claims Fund, which will be funded with  
17 Berman's projected disposable income (as defined in Section 1325(b)(2)) to be received by  
18 Berman during the five-year period beginning on the Effective Date. See **Exhibit 2**, attached  
19 hereto. The Plan therefore complies with Section 1129(a)(15)(B).

20 **F. ALTERNATIVES TO CONFIRMATION OF THE PLAN**

21 If a Plan is not confirmed, Debtors or another party-in-interest may attempt to  
22 formulate or propose a different Plan or Plans of Reorganization. Such Plans might involve a  
23 reorganization and continuation of B. & J.'s business, a sale of B. & J.'s business as a going  
24 concern, an orderly liquidation of B. & J.'s assets, or any combination thereof. If no Plan of  
25 Reorganization is determined by the Bankruptcy Court to be confirmable, the Chapter 11  
26 case may be converted to a liquidation proceeding under Chapter 7 of the Bankruptcy Code.

1 In a liquidation, a Chapter 7 Trustee would be appointed with the purpose of  
2 liquidating the assets of Debtors. Typically, in liquidation, assets are sold for less than their  
3 going concern value and, accordingly, the return to Creditors and Interest holders is less than  
4 the return in a reorganization, which derives the value to be distributed in a Plan from the  
5 business as a going concern. Proceeds from liquidation would be distributed to Creditors and  
6 Interest holders of Debtors in accordance with the priorities set forth in the Bankruptcy Code.

7 Debtors believe there is no currently available alternative that would offer holders of  
8 Claims and Interests in Debtors greater than the Plan and urges all parties entitled to vote on  
9 the Plan to vote to accept the Plan.

10 **XI. CONCLUSION**

11 Please read this Disclosure Statement and the Plan carefully. After reviewing all the  
12 information and making an informed decision, please vote by using the enclosed ballot.

13 DATED this 8th day of October, 2019.

14 Respectfully submitted,

15 B. & J. PROPERTY INVESTMENTS, INC.

16  
17 By /s/ William J. Berman  
18 William J. Berman, President

19  
20 By /s/ William J. Berman  
21 William J. Berman, Personally



1 Presented by:

2 TONKON TORP LLP

3  
4 By /s/ Timothy J. Conway

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12  
13  
14  
15 **EXHIBITS ATTACHED:**

16 Exhibit 1: B. & J. Financial Projections

17 Exhibit 2: Berman Projected Disposable Income Calculation

18 Exhibit 3: Berman Liquidation Analysis

19 038533/00002/10363069v6

# **EXHIBIT 1**

## **B. & J. FINANCIAL PROJECTIONS**

# Exhibit 1 - B. & J. Financial Projections

## B&J Property Investments Budget Forecast 2019

	Jul-19	Aug-19	Sep-19	Oct-19	Nov-19	Dec-19	TOTALS
<b>INCOME</b>							
R.V. SPACE RENTS	\$66,754	\$66,754	\$66,754	\$66,754	\$66,754	\$66,754	\$400,524
SPACE ELECTRIC	\$8,000	\$8,000	\$8,000	\$8,000	\$8,000	\$8,000	\$48,000
MINI STORAGE RENTS	\$18,375	\$18,375	\$18,375	\$18,375	\$18,375	\$18,375	\$110,250
STORE INCOME	\$325	\$325	\$325	\$325	\$325	\$325	\$1,950
	\$93,454	\$93,454	\$93,454	\$93,454	\$93,454	\$93,454	\$560,724
<b>EXPENSES</b>							
STORAGE RENT/DEP REFUND	\$70	\$70	\$70	\$70	\$70	\$70	\$420
RV RENT/DEP REFUND	\$180	\$180	\$180	\$180	\$180	\$180	\$1,080
SPACE ELECTRICITY	\$9,300	\$9,300	\$9,300	\$9,300	\$9,300	\$9,300	\$55,800
MISC	\$554	\$554	\$554	\$554	\$554	\$554	\$3,321
FACILITY ELECTRICITY	\$604	\$604	\$604	\$604	\$604	\$604	\$3,622
NW GAS	\$330	\$330	\$330	\$330	\$330	\$330	\$1,979
WATER/SEWER	\$2,796	\$2,796	\$2,796	\$2,796	\$2,796	\$2,796	\$16,779
CABEL TV	\$3,134	\$3,134	\$3,134	\$3,134	\$3,134	\$3,134	\$18,807
TELEPHONE	\$400	\$400	\$400	\$400	\$400	\$400	\$2,400
TELEPHONE AD	\$298	\$298	\$298	\$298	\$298	\$298	\$1,790
GARBAGE	\$2,346	\$2,346	\$2,346	\$2,346	\$2,346	\$2,346	\$14,076
OFFICE SUPPLY	\$273	\$273	\$273	\$273	\$273	\$273	\$1,635
SCREENINGS	\$132	\$132	\$132	\$132	\$132	\$132	\$790
MAINTENANCE	\$1,121	\$1,121	\$1,121	\$1,121	\$1,121	\$1,121	\$6,728
ADS	\$6	\$6	\$6	\$6	\$6	\$6	\$34
FREIGHT/POSTAGE	\$0	\$0	\$0	\$0	\$0	\$0	\$0
RECREATION	\$145	\$145	\$145	\$145	\$145	\$145	\$870
STORE STOCK	\$200	\$200	\$200	\$200	\$200	\$200	\$1,200
MANAGEMENT FEES	\$29,000	\$29,000	\$29,000	\$29,000	\$29,000	\$29,000	\$174,000
MEDICAL	\$3,503	\$3,503	\$3,503	\$3,503	\$3,503	\$3,503	\$21,017
AUTO	\$350	\$350	\$350	\$350	\$350	\$350	\$2,100
LEGAL/ACCOUNTING	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$12,000
INSURANCE	\$0	\$0	\$0	\$14,000	\$0	\$0	\$14,000
CAPITAL IMPROVEMENTS	\$0	\$15,000	\$0	\$0	\$0	\$0	\$15,000
CONTINGENCY FUND	\$7,300	\$7,300	\$7,300	\$7,300	\$7,300	\$7,300	\$43,800
PROPERTY TAXES	\$0	\$0	\$0	\$64,000	\$0	\$0	\$64,000
	64,041	79,041	64,041	142,041	64,041	64,041	477,247
<b>SECURED LENDER</b>							
	\$14,080	\$14,080	\$14,080	\$14,080	\$14,080	\$14,080	\$84,481
	\$14,080	\$14,080	\$14,080	\$14,080	\$14,080	\$14,080	\$84,481
<b>TOTAL OPERATING EXPENSES</b>							
	\$78,121	\$93,121	\$78,121	\$156,121	\$78,121	\$78,121	\$561,728
<b>OPERATING INCOME</b>							
	\$15,333	\$333	\$15,333	-\$62,667	\$15,333	\$15,333	-\$1,004

# Exhibit 1 - B. & J. Financial Projections

## B&J Property Investments Budget Forecast 2020

	Jan-20	Feb-20	Mar-20	Apr-20	May-20	Jun-20	Jul-20	Aug-20	Sep-20	Oct-20	Nov-20	Dec-20	TOTALS
<b>INCOME</b>													
R.V. SPACE RENTS	\$66,754	\$66,754	\$66,754	\$66,754	\$66,754	\$68,089	\$72,135	\$72,135	\$72,135	\$72,135	\$72,135	\$72,135	\$834,669
SPACE ELECTRIC	\$8,000	\$8,000	\$8,000	\$8,000	\$8,000	\$8,160	\$8,160	\$8,160	\$8,160	\$8,160	\$8,160	\$8,160	\$97,120
MINI STORAGE RENTS	\$18,375	\$18,375	\$18,375	\$18,375	\$18,375	\$18,375	\$18,375	\$18,375	\$18,375	\$18,375	\$18,375	\$18,375	\$220,500
STORE INCOME	\$325	\$325	\$325	\$325	\$325	\$325	\$325	\$325	\$325	\$325	\$325	\$325	\$3,900
	\$93,454	\$93,454	\$93,454	\$93,454	\$93,454	\$94,949	\$98,995	\$98,995	\$98,995	\$98,995	\$98,995	\$98,995	\$1,156,189
<b>EXPENSES</b>													
STORAGE RENT/DEP REFUND	\$70	\$71	\$71	\$71	\$71	\$71	\$71	\$71	\$71	\$71	\$71	\$71	\$855
RV RENT/DEP REFUND	\$180	\$184	\$184	\$184	\$184	\$184	\$184	\$184	\$184	\$184	\$184	\$184	\$2,200
SPACE ELECTRICITY	\$9,300	\$9,300	\$9,300	\$9,300	\$9,300	\$9,486	\$9,486	\$9,486	\$9,486	\$9,486	\$9,486	\$9,486	\$112,902
MISC	\$554	\$565	\$565	\$565	\$565	\$565	\$565	\$565	\$565	\$565	\$565	\$565	\$6,765
FACILITY ELECTRICITY	\$604	\$616	\$616	\$616	\$616	\$616	\$616	\$616	\$616	\$616	\$616	\$616	\$7,377
NW GAS	\$330	\$336	\$336	\$336	\$336	\$336	\$336	\$336	\$336	\$336	\$336	\$336	\$4,030
WATER/SEWER	\$2,796	\$2,852	\$2,852	\$2,852	\$2,852	\$2,852	\$2,852	\$2,852	\$2,852	\$2,852	\$2,852	\$2,852	\$34,172
CABEL TV	\$3,134	\$3,197	\$3,197	\$3,197	\$3,197	\$3,197	\$3,197	\$3,197	\$3,197	\$3,197	\$3,197	\$3,197	\$38,303
TELEPHONE	\$400	\$408	\$408	\$408	\$408	\$408	\$408	\$408	\$408	\$408	\$408	\$408	\$4,888
TELEPHONE AD	\$298	\$304	\$304	\$304	\$304	\$304	\$304	\$304	\$304	\$304	\$304	\$304	\$3,645
GARBAGE	\$2,346	\$2,393	\$2,393	\$2,393	\$2,393	\$2,393	\$2,393	\$2,393	\$2,393	\$2,393	\$2,393	\$2,393	\$28,668
OFFICE SUPPLY	\$273	\$278	\$278	\$278	\$278	\$278	\$278	\$278	\$278	\$278	\$278	\$278	\$3,331
SCREENINGS	\$132	\$134	\$134	\$134	\$134	\$134	\$134	\$134	\$134	\$134	\$134	\$134	\$1,609
MAINTENANCE	\$1,121	\$1,144	\$1,144	\$1,144	\$1,144	\$1,144	\$1,144	\$1,144	\$1,144	\$1,144	\$1,144	\$1,144	\$13,702
ADS	\$6	\$6	\$6	\$6	\$6	\$6	\$6	\$6	\$6	\$6	\$6	\$6	\$69
FREIGHT/POSTAGE	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
RECREATION	\$145	\$148	\$148	\$148	\$148	\$148	\$148	\$148	\$148	\$148	\$148	\$148	\$1,772
STORE STOCK	\$200	\$204	\$204	\$204	\$204	\$204	\$204	\$204	\$204	\$204	\$204	\$204	\$2,444
MANAGEMENT FEES	\$29,000	\$29,580	\$29,580	\$29,580	\$29,580	\$29,580	\$29,580	\$29,580	\$29,580	\$29,580	\$29,580	\$29,580	\$354,380
MEDICAL	\$3,503	\$3,503	\$4,028	\$4,028	\$4,028	\$4,028	\$4,028	\$4,028	\$4,028	\$4,028	\$4,028	\$4,028	\$47,288
AUTO	\$350	\$357	\$357	\$357	\$357	\$357	\$357	\$357	\$357	\$357	\$357	\$357	\$4,277
LEGAL/ACCOUNTING	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$24,000
INSURANCE	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$14,500	\$0	\$0	\$14,500
CAPITAL IMPROVEMENTS	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$85,000	\$0	\$0	\$0	\$0	\$85,000
CONTINGENCY FUND	\$8,800	\$8,800	\$8,800	\$8,800	\$8,800	\$8,800	\$8,800	\$8,800	\$8,800	\$8,800	\$8,800	\$8,800	\$105,600
PROPERTY TAXES	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$66,000	\$0	\$0	\$66,000
	\$65,541	\$66,380	\$66,905	\$66,905	\$66,905	\$67,091	\$67,091	\$152,091	\$67,091	\$147,591	\$67,091	\$67,091	\$967,777
<b>SECURED LENDER</b>													
	\$14,080	\$14,080	\$14,080	\$14,080	\$14,080	\$14,080	\$14,080	\$14,080	\$14,080	\$14,080	\$14,080	\$14,080	\$168,962
	\$14,080	\$14,080	\$14,080	\$14,080	\$14,080	\$14,080	\$14,080	\$14,080	\$14,080	\$14,080	\$14,080	\$14,080	\$168,962
<b>TOTAL OPERATING EXPENSES</b>	\$79,621	\$80,460	\$80,985	\$80,985	\$80,985	\$81,171	\$81,171	\$166,171	\$81,171	\$161,671	\$81,171	\$81,171	\$1,136,738
<b>OPERATING INCOME</b>	\$13,833	\$12,994	\$12,469	\$12,469	\$12,469	\$13,778	\$17,824	-\$67,176	\$17,824	-\$62,676	\$17,824	\$17,824	\$19,451

# Exhibit 1 - B. & J. Financial Projections

## B&J Property Investments Budget Forecast 2021

	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	TOTALS
<b>INCOME</b>													
R.V. SPACE RENTS	\$72,135	\$72,135	\$72,135	\$72,135	\$72,135	\$73,578	\$73,578	\$73,578	\$73,578	\$73,578	\$73,578	\$73,578	\$875,719
SPACE ELECTRIC	\$8,160	\$8,160	\$8,160	\$8,160	\$8,160	\$8,323	\$8,323	\$8,323	\$8,323	\$8,323	\$8,323	\$8,323	\$99,062
MINI STORAGE RENTS	\$18,375	\$18,375	\$18,375	\$18,375	\$18,375	\$18,743	\$18,743	\$18,743	\$18,743	\$18,743	\$18,743	\$18,743	\$223,073
STORE INCOME	\$325	\$325	\$325	\$325	\$325	\$325	\$325	\$325	\$325	\$325	\$325	\$325	\$3,900
	\$98,995	\$98,995	\$98,995	\$98,995	\$98,995	\$100,968	\$100,968	\$100,968	\$100,968	\$100,968	\$100,968	\$100,968	\$1,201,754
<b>EXPENSES</b>													
STORAGE RENT/DEP REFUND	\$71	\$73	\$73	\$73	\$73	\$73	\$73	\$73	\$73	\$73	\$73	\$73	\$873
RV RENT/DEP REFUND	\$184	\$187	\$187	\$187	\$187	\$187	\$187	\$187	\$187	\$187	\$187	\$187	\$2,244
SPACE ELECTRICITY	\$9,486	\$9,486	\$9,486	\$9,486	\$9,486	\$9,676	\$9,676	\$9,676	\$9,676	\$9,676	\$9,676	\$9,676	\$115,160
MISC	\$565	\$576	\$576	\$576	\$576	\$576	\$576	\$576	\$576	\$576	\$576	\$576	\$6,900
FACILITY ELECTRICITY	\$616	\$628	\$628	\$628	\$628	\$628	\$628	\$628	\$628	\$628	\$628	\$628	\$7,525
NW GAS	\$336	\$343	\$343	\$343	\$343	\$343	\$343	\$343	\$343	\$343	\$343	\$343	\$4,110
WATER/SEWER	\$2,852	\$2,909	\$2,909	\$2,909	\$2,909	\$2,909	\$2,909	\$2,909	\$2,909	\$2,909	\$2,909	\$2,909	\$34,856
CABEL TV	\$3,197	\$3,261	\$3,261	\$3,261	\$3,261	\$3,261	\$3,261	\$3,261	\$3,261	\$3,261	\$3,261	\$3,261	\$39,069
TELEPHONE	\$408	\$416	\$416	\$416	\$416	\$416	\$416	\$416	\$416	\$416	\$416	\$416	\$4,986
TELEPHONE AD	\$304	\$310	\$310	\$310	\$310	\$310	\$310	\$310	\$310	\$310	\$310	\$310	\$3,718
GARBAGE	\$2,393	\$2,441	\$2,441	\$2,441	\$2,441	\$2,441	\$2,441	\$2,441	\$2,441	\$2,441	\$2,441	\$2,441	\$29,242
OFFICE SUPPLY	\$278	\$284	\$284	\$284	\$284	\$284	\$284	\$284	\$284	\$284	\$284	\$284	\$3,397
SCREENINGS	\$134	\$137	\$137	\$137	\$137	\$137	\$137	\$137	\$137	\$137	\$137	\$137	\$1,641
MAINTENANCE	\$1,144	\$1,167	\$1,167	\$1,167	\$1,167	\$1,167	\$1,167	\$1,167	\$1,167	\$1,167	\$1,167	\$1,167	\$13,976
ADS	\$6	\$6	\$6	\$6	\$6	\$6	\$6	\$6	\$6	\$6	\$6	\$6	\$70
FREIGHT/POSTAGE	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
RECREATION	\$148	\$151	\$151	\$151	\$151	\$151	\$151	\$151	\$151	\$151	\$151	\$151	\$1,807
STORE STOCK	\$204	\$208	\$208	\$208	\$208	\$208	\$208	\$208	\$208	\$208	\$208	\$208	\$2,493
MANAGEMENT FEES	\$29,580	\$30,172	\$30,172	\$30,172	\$30,172	\$30,172	\$30,172	\$30,172	\$30,172	\$30,172	\$30,172	\$30,172	\$361,468
MEDICAL	\$4,028	\$4,028	\$4,632	\$4,632	\$4,632	\$4,632	\$4,632	\$4,632	\$4,632	\$4,632	\$4,632	\$4,632	\$54,378
AUTO	\$357	\$364	\$364	\$364	\$364	\$364	\$364	\$364	\$364	\$364	\$364	\$364	\$4,363
LEGAL/ACCOUNTING	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$24,000
INSURANCE	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$15,000
CAPITAL IMPROVEMENTS	\$0	\$0	\$0	\$0	\$20,000	\$0	\$0	\$90,000	\$0	\$0	\$0	\$0	\$110,000
CONTINGENCY FUND	\$9,200	\$9,200	\$9,200	\$9,200	\$9,200	\$9,200	\$9,200	\$9,200	\$9,200	\$9,200	\$9,200	\$9,200	\$110,400
PROPERTY TAXES	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$67,980
	\$67,491	\$68,347	\$68,951	\$68,951	\$88,951	\$69,141	\$69,141	\$159,141	\$69,141	\$152,121	\$69,141	\$69,141	\$1,019,654
<b>SECURED LENDER</b>													
	\$14,080	\$14,080	\$14,080	\$14,080	\$14,080	\$14,080	\$14,080	\$14,080	\$14,080	\$14,080	\$14,080	\$14,080	\$168,962
	\$14,080	\$14,080	\$14,080	\$14,080	\$14,080	\$14,080	\$14,080	\$14,080	\$14,080	\$14,080	\$14,080	\$14,080	\$168,962
<b>TOTAL OPERATING EXPENSES</b>													
	\$81,571	\$82,427	\$83,031	\$83,031	\$103,031	\$83,221	\$83,221	\$173,221	\$83,221	\$166,201	\$83,221	\$83,221	\$1,188,616
<b>OPERATING INCOME</b>													
	\$17,424	\$16,568	\$15,964	\$15,964	-\$4,036	\$17,748	\$17,748	-\$72,252	\$17,748	-\$65,232	\$17,748	\$17,748	\$13,138

# **EXHIBIT 2**

## **BERMAN PROJECTED DISPOSABLE INCOME CALCULATION**

## Exhibit 2 - Berman Projected Disposable Income Calculation

Fill in this information to identify your case:

Debtor 1 William John Berman

Debtor 2 \_\_\_\_\_  
(Spouse, if filing)

United States Bankruptcy Court for the: District of Oregon

Case number 19-60230-pcm11  
(if known)

Check as directed in lines 17 and 21:

According to the calculations required by this Statement:

- ☐ 1. Disposable income is not determined under 11 U.S.C. § 1325(b)(3).
- ☒ 2. Disposable income is determined under 11 U.S.C. § 1325(b)(3).
- ☐ 3. The commitment period is 3 years.
- ☒ 4. The commitment period is 5 years.

☐ Check if this is an amended filing

### Official Form 122C-1

## Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period

12/15

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for being accurate. If more space is needed, attach a separate sheet to this form. Include the line number to which the additional information applies. On the top of any additional pages, write your name and case number (if known).

### Part 1: Calculate Your Average Monthly Income

1. What is your marital and filing status? Check one only.

☐ Not married. Fill out Column A, lines 2-11.

☒ Married. Fill out both Columns A and B, lines 2-11.

Fill in the average monthly income that you received from all sources, derived during the 6 full months before you file this bankruptcy case. 11 U.S.C. § 101(10A). For example, if you are filing on September 15, the 6-month period would be March 1 through August 31. If the amount of your monthly income varied during the 6 months, add the income for all 6 months and divide the total by 6. Fill in the result. Do not include any income amount more than once. For example, if both spouses own the same rental property, put the income from that property in one column only. If you have nothing to report for any line, write \$0 in the space.

	Column A Debtor 1	Column B Debtor 2 or non-filing spouse
2. Your gross wages, salary, tips, bonuses, overtime, and commissions (before all payroll deductions).	\$ 6,400.00	\$ 6,400.00
3. Alimony and maintenance payments. Do not include payments from a spouse if Column B is filled in.	\$ 0.00	\$ 0.00
4. All amounts from any source which are regularly paid for household expenses of you or your dependents, including child support. Include regular contributions from an unmarried partner, members of your household, your dependents, parents, and roommates. Do not include payments from a spouse. Do not include payments you listed on line 3.	\$ 0.00	\$ 0.00
5. Net income from operating a business, profession, or farm		
Gross receipts (before all deductions)	\$ 0.00	
Ordinary and necessary operating expenses	-\$ 0.00	
Net monthly income from a business, profession, or farm	\$ 0.00	
	Copy here -> \$ 0.00	\$ 0.00
6. Net income from rental and other real property		
Gross receipts (before all deductions)	\$ 0.00	
Ordinary and necessary operating expenses	-\$ 0.00	
Net monthly income from rental or other real property	\$ 0.00	
	Copy here -> \$ 0.00	\$ 0.00

# Exhibit 2 - Berman Projected Disposable Income Calculation

Debtor 1 **William John Berman**

Case number (if known) **19-60230-pcm11**

	Column A Debtor 1	Column B Debtor 2 or non-filing spouse
7. <b>Interest, dividends, and royalties</b>	\$ <b>0.00</b>	\$ <b>0.00</b>
8. <b>Unemployment compensation</b>	\$ <b>0.00</b>	\$ <b>0.00</b>
Do not enter the amount if you contend that the amount received was a benefit under the Social Security Act. Instead, list it here:		
For you .....	\$ <b>0.00</b>	
For your spouse .....	\$ <b>0.00</b>	
9. <b>Pension or retirement income.</b> Do not include any amount received that was a benefit under the Social Security Act.	\$ <b>0.00</b>	\$ <b>0.00</b>
10. <b>Income from all other sources not listed above.</b> Specify the source and amount. Do not include any benefits received under the Social Security Act or payments received as a victim of a war crime, a crime against humanity, or international or domestic terrorism. If necessary, list other sources on a separate page and put the total below.		
<b>Air Force Separation Pay</b>	\$ <b>1,243.00</b>	\$ <b>0.00</b>
	\$ <b>0.00</b>	\$ <b>0.00</b>
Total amounts from separate pages, if any.	+ \$ <b>0.00</b>	\$ <b>0.00</b>
11. <b>Calculate your total average monthly income.</b> Add lines 2 through 10 for each column. Then add the total for Column A to the total for Column B.	\$ <b>7,643.00</b>	+ \$ <b>6,400.00</b> = \$ <b>14,043.00</b>
		Total average monthly income

## Part 2: Determine How to Measure Your Deductions from Income

12. **Copy your total average monthly income from line 11.** ..... \$ **14,043.00**

13. **Calculate the marital adjustment.** Check one:

☐ You are not married. Fill in 0 below.

☐ You are married and your spouse is filing with you. Fill in 0 below.

☒ You are married and your spouse is not filing with you.

Fill in the amount of the income listed in line 11, Column B, that was NOT regularly paid for the household expenses of you or your dependents, such as payment of the spouse's tax liability or the spouse's support of someone other than you or your dependents.

Below, specify the basis for excluding this income and the amount of income devoted to each purpose. If necessary, list additional adjustments on a separate page.

If this adjustment does not apply, enter 0 below.

Basis for exclusion	Amount
<b>Non-filing spouse's expenses, retirement, insurance, health svgs, debt pmts</b>	\$ <b>1,800.00</b>
	\$
	\$
Total .....	\$ <b>1,800.00</b>

Copy here=> - **1,800.00**

14. **Your current monthly income.** Subtract line 13 from line 12. \$ **12,243.00**

15. **Calculate your current monthly income for the year.** Follow these steps:

15a. Copy line 14 here=> ..... \$ **12,243.00**

Multiply line 15a by 12 (the number of months in a year). x 12

15b. The result is your current monthly income for the year for this part of the form. ..... \$ **146,916.00**



## Exhibit 2 - Berman Projected Disposable Income Calculation

Debtor 1 **William John Berman**

Case number (if known) **19-60230-pcm11**

**16. Calculate the median family income that applies to you.** Follow these steps:

16a. Fill in the state in which you live.

**OR**

16b. Fill in the number of people in your household.

**2**

16c. Fill in the median family income for your state and size of household.

\$ **66,745.00**

To find a list of applicable median income amounts, go online using the link specified in the separate instructions for this form. This list may also be available at the bankruptcy clerk's office.

**17. How do the lines compare?**

17a. ☐ Line 15b is less than or equal to line 16c. On the top of page 1 of this form, check box 1, *Disposable income is not determined under 11 U.S.C. § 1325(b)(3)*. **Go to Part 3.** Do NOT fill out *Calculation of Your Disposable Income* (Official Form 122C-2).

17b. ☒ Line 15b is more than line 16c. On the top of page 1 of this form, check box 2, *Disposable income is determined under 11 U.S.C. § 1325(b)(3)*. **Go to Part 3 and fill out Calculation of Your Disposable Income (Official Form 122C-2).** On line 39 of that form, copy your current monthly income from line 14 above.

**Part 3: Calculate Your Commitment Period Under 11 U.S.C. § 1325(b)(4)**

18. Copy your total average monthly income from line 11. \$ **14,043.00**

19. **Deduct the marital adjustment if it applies.** If you are married, your spouse is not filing with you, and you contend that calculating the commitment period under 11 U.S.C. § 1325(b)(4) allows you to deduct part of your spouse's income, copy the amount from line 13.

19a. If the marital adjustment does not apply, fill in 0 on line 19a.

-\$ **1,800.00**

19b. Subtract line 19a from line 18.

\$ **12,243.00**

**20. Calculate your current monthly income for the year.** Follow these steps:

20a. Copy line 19b

\$ **12,243.00**

Multiply by 12 (the number of months in a year).

**x 12**

20b. The result is your current monthly income for the year for this part of the form

\$ **146,916.00**

20c. Copy the median family income for your state and size of household from line 16c

\$ **66,745.00**

**21. How do the lines compare?**

☐ Line 20b is less than line 20c. Unless otherwise ordered by the court, on the top of page 1 of this form, check box 3, *The commitment period is 3 years*. Go to Part 4.

☒ Line 20b is more than or equal to line 20c. Unless otherwise ordered by the court, on the top of page 1 of this form, check box 4, *The commitment period is 5 years*. Go to Part 4.

## Exhibit 2 - Berman Projected Disposable Income Calculation

Fill in this information to identify your case:

Debtor 1 William John Berman

Debtor 2 \_\_\_\_\_  
(Spouse, if filing)

United States Bankruptcy Court for the: District of Oregon

Case number 19-60230-pcm11  
(if known)

☐ Check if this is an amended filing

Official Form 122C-2

### Chapter 13 Calculation of Your Disposable Income

04/16

To fill out this form, you will need your completed copy of *Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period* (Official Form 122C-1).

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for being accurate. If more space is needed, attach a separate sheet to this form. Include the line number to which additional information applies. On the top any additional pages, write your name and case number (if known).

#### Part 1: Calculate Your Deductions from Your Income

The Internal Revenue Service (IRS) issues National and Local Standards for certain expense amounts. Use these amounts to answer the questions in lines 6-15. To find the IRS standards, go online using the link specified in the separate instructions for this form. This information may also be available at the bankruptcy clerk's office.

Deduct the expense amounts set out in lines 6-15 regardless of your actual expense. In later parts of the form, you will use some of your actual expenses if they are higher than the standards. Do not include any operating expenses that you subtracted from income in lines 5 and 6 of Form 122C-1, and do not deduct any amounts that you subtracted from your spouse's income in line 13 of Form 122C-1.

If your expenses differ from month to month, enter the average expense.

Note: Line numbers 1-4 are not used in this form. These numbers apply to information required by a similar form used in chapter 7 cases.

#### 5. The number of people used in determining your deductions from income

Fill in the number of people who could be claimed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support. This number may be different from the number of people in your household.

2

#### National Standards

You must use the IRS National Standards to answer the questions in lines 6-7.

6. **Food, clothing, and other items:** Using the number of people you entered in line 5 and the IRS National Standards, fill in the dollar amount for food, clothing, and other items. \$ 1,202.00
7. **Out-of-pocket health care allowance:** Using the number of people you entered in line 5 and the IRS National Standards, fill in the dollar amount for out-of-pocket health care. The number of people is split into two categories--people who are under 65 and people who are 65 or older--because older people have a higher IRS allowance for health care costs. If your actual expenses are higher than this IRS amount, you may deduct the additional amount on line 22.

# Exhibit 2 - Berman Projected Disposable Income Calculation

Debtor 1 **William John Berman**

Case number (if known) **19-60230-pcm11**

## People who are under 65 years of age

7a. Out-of-pocket health care allowance per person \$ 52  
 7b. Number of people who are under 65 X 2  
 7c. Subtotal. Multiply line 7a by line 7b. \$ 104.00 Copy here=> \$ 104.00

## People who are 65 years of age or older

7d. Out-of-pocket health care allowance per person \$ 114  
 7e. Number of people who are 65 or older X 0  
 7f. Subtotal. Multiply line 7d by line 7e. \$ 0.00 Copy here=> \$ 0.00

7g. Total. Add line 7c and line 7f \$ 104.00 Copy total here=> \$ 104.00

**Local Standards** You must use the IRS Local Standards to answer the questions in lines 8-15.

Based on information from the IRS, the U.S. Trustee Program has divided the IRS Local Standard for housing for bankruptcy purposes into two parts:

■ Housing and utilities - Insurance and operating expenses

■ Housing and utilities - Mortgage or rent expenses

To answer the questions in lines 8-9, use the U.S. Trustee Program chart. To find the chart, go online using the link specified in the separate instructions for this form. This chart may also be available at the bankruptcy clerk's office.

8. **Housing and utilities - Insurance and operating expenses:** Using the number of people you entered in line 5, fill in the dollar amount listed for your county for insurance and operating expenses. \$ 551.00

9. **Housing and utilities - Mortgage or rent expenses:**

9a. Using the number of people you entered in line 5, fill in the dollar amount listed for your county for mortgage or rent expenses. \$ 1,202.00

9b. Total average monthly payment for all mortgages and other debts secured by your home.  
 To calculate the total average monthly payment, add all amounts that are contractually due to each secured creditor in the 60 months after you file for bankruptcy. Next divide by 60.

Name of the creditor	Average monthly payment
Quicken Loans Inc.	\$ <u>2,850.00</u>

9b. Total average monthly payment \$ 2,850.00 Copy here=> -\$ 2,850.00 Repeat this amount on line 33a.

9c. Net mortgage or rent expense.

Subtract line 9b (total average monthly payment) from line 9a (mortgage or rent expense). If this number is less than \$0, enter \$0.

\$ 0.00 Copy here=> \$ 0.00

10. If you claim that the U.S. Trustee Program's division of the IRS Local Standard for housing is incorrect and affects the calculation of your monthly expenses, fill in any additional amount you claim. \$ 0.00

Explain why: \_\_\_\_\_

# Exhibit 2 - Berman Projected Disposable Income Calculation

Debtor 1 **William John Berman**

Case number (if known) **19-60230-pcm11**

11. **Local transportation expenses:** Check the number of vehicles for which you claim an ownership or operating expense.

☐ 0. Go to line 14.

☐ 1. Go to line 12.

☒ 2 or more. Go to line 12.

12. **Vehicle operation expense:** Using the IRS Local Standards and the number of vehicles for which you claim the operating expenses, fill in the *Operating Costs* that apply for your Census region or metropolitan statistical area. \$ **436.00**

13. **Vehicle ownership or lease expense:** Using the IRS Local Standards, calculate the net ownership or lease expense for each vehicle below. You may not claim the expense if you do not make any loan or lease payments on the vehicle. In addition, you may not claim the expense for more than two vehicles.

**Vehicle 1 Describe Vehicle 1:**

13a. Ownership or leasing costs using IRS Local Standard..... \$ **0.00**

13b. Average monthly payment for all debts secured by Vehicle 1.

Do not include costs for leased vehicles.

To calculate the average monthly payment here and on line 13e, add all amounts that are contractually due to each secured creditor in the 60 months after you file for bankruptcy. Then divide by 60.

Name of each creditor for Vehicle 1	Average monthly payment
-NONE-	\$

Total Average Monthly Payment

\$ **0.00**

Copy here =>

-\$ **0.00**

Repeat this amount on line 33b.

13c. Net Vehicle 1 ownership or lease expense

Subtract line 13b from line 13a. if the number is less than \$0, enter \$0. ....

\$ **0.00**

Copy net Vehicle 1 expense here =>

\$ **0.00**

**Vehicle 2 Describe Vehicle 2:**

13d. Ownership or leasing costs using IRS Local Standard..... \$ **0.00**

13e. Average monthly payment for all debts secured by Vehicle 2. Do not include costs for leased vehicles.

Name of each creditor for Vehicle 2	Average monthly payment
-NONE-	\$

Total average monthly payment

\$ **0.00**

Copy here =>

-\$ **0.00**

Repeat this amount on line 33c.

13f. Net Vehicle 2 ownership or lease expense

Subtract line 13e from line 13d. if this number is less than \$0, enter \$0. ....

\$ **0.00**

Copy net Vehicle 2 expense here =>

\$ **0.00**

14. **Public transportation expense:** If you claimed 0 vehicles in line 11, using the IRS Local Standards, fill in the *Public Transportation* expense allowance regardless of whether you use public transportation. \$ **0.00**

15. **Additional public transportation expense:** If you claimed 1 or more vehicles in line 11 and if you claim that you may also deduct a public transportation expense, you may fill in what you believe is the appropriate expense, but you may not claim more than the IRS Local Standard for *Public Transportation*. \$ **0.00**

# Exhibit 2 - Berman Projected Disposable Income Calculation

Debtor 1 **William John Berman**

Case number (if known) **19-60230-pcm11**

## Other Necessary Expenses

In addition to the expense deductions listed above, you are allowed your monthly expenses for the following IRS categories.

16. **Taxes:** The total monthly amount that you will actually pay for federal, state and local taxes, such as income taxes, self-employment taxes, social security taxes, and Medicare taxes. You may include the monthly amount withheld from your pay for these taxes. However, if you expect to receive a tax refund, you must divide the expected refund by 12 and subtract that number from the total monthly amount that is withheld to pay for taxes.  
Do not include real estate, sales, or use taxes. \$ **2,800.00**
17. **Involuntary deductions:** The total monthly payroll deductions that your job requires, such as retirement contributions, union dues, and uniform costs.  
Do not include amounts that are not required by your job, such as voluntary 401(k) contributions or payroll savings. \$ **0.00**
18. **Life Insurance:** The total monthly premiums that you pay for your own term life insurance. If two married people are filing together, include payments that you make for your spouse's term life insurance.  
Do not include premiums for life insurance on your dependents, for a non-filing spouse's life insurance, or for any form of life insurance other than term. \$ **500.00**
19. **Court-ordered payments:** The total monthly amount that you pay as required by the order of a court or administrative agency, such as spousal or child support payments.  
Do not include payments on past due obligations for spousal or child support. You will list these obligations in line 35. \$ **0.00**
20. **Education:** The total monthly amount that you pay for education that is either required:  
☒ as a condition for your job, or  
☒ for your physically or mentally challenged dependent child if no public education is available for similar services. \$ **0.00**
21. **Childcare:** The total monthly amount that you pay for childcare, such as babysitting, daycare, nursery, and preschool.  
Do not include payments for any elementary or secondary school education. \$ **0.00**
22. **Additional health care expenses, excluding insurance costs:** The monthly amount that you pay for health care that is required for the health and welfare of you or your dependents and that is not reimbursed by insurance or paid by a health savings account. Include only the amount that is more than the total entered in line 7.  
Payments for health insurance or health savings accounts should be listed only in line 25. \$ **296.00**
23. **Optional telephone and telephone services:** The total monthly amount that you pay for telecommunication services for you and your dependents, such as pagers, call waiting, caller identification, special long distance, or business cell phone service, to the extent necessary for your health and welfare or that of your dependents or for the production of income, if it is not reimbursed by your employer.  
Do not include payments for basic home telephone, internet and cell phone service. Do not include self-employment expenses, such as those reported on line 5 of Official Form 122C-1, or any amount you previously deducted. +\$ **330.00**
24. **Add all of the expenses allowed under the IRS expense allowances.**  
Add lines 6 through 23. \$ **6,219.00**

## Additional Expense Deductions

These are additional deductions allowed by the Means Test.

Note: Do not include any expense allowances listed in lines 6-24.

25. **Health insurance, disability insurance, and health savings account expenses.** The monthly expenses for health insurance, disability insurance, and health savings accounts that are reasonably necessary for yourself, your spouse, or your dependents.
- |                        |      |               |                                    |
|------------------------|------|---------------|------------------------------------|
| Health insurance       | \$   | <b>0.00</b>   |                                    |
| Disability insurance   | \$   | <b>0.00</b>   |                                    |
| Health savings account | + \$ | <b>500.00</b> |                                    |
| Total                  | \$   | <b>500.00</b> | Copy total here=> \$ <b>500.00</b> |
- Do you actually spend this total amount?  
☐ No. How much do you actually spend? \$ \_\_\_\_\_  
☒ Yes \$ \_\_\_\_\_
26. **Continued contributions to the care of household or family members.** The actual monthly expenses that you will continue to pay for the reasonable and necessary care and support of an elderly, chronically ill, or disabled member of your household or member of your immediate family who is unable to pay for such expenses. These expenses may include contributions to an account of a qualified ABLE program. 26 U.S.C. § 529A(b). \$ **0.00**
27. **Protection against family violence.** The reasonably necessary monthly expenses that you incur to maintain the safety of you and your family under the Family Violence Prevention and Services Act or other federal laws that apply. \$ **0.00**
- By law, the court must keep the nature of these expenses confidential. \$ **0.00**

## Exhibit 2 - Berman Projected Disposable Income Calculation

Debtor 1 **William John Berman**

Case number (if known) **19-60230-pcm11**

28. **Additional home energy costs.** Your home energy costs are included in your insurance and operating expenses on line 8.
- If you believe that you have home energy costs that are more than the home energy costs included in expenses on line 8, then fill in the excess amount of home energy costs.
- You must give your case trustee documentation of your actual expenses, and you must show that the additional amount claimed is reasonable and necessary. \$ **0.00**
29. **Education expenses for dependent children who are younger than 18.** The monthly expenses (not more than \$160.42\* per child) that you pay for your dependent children who are younger than 18 years old to attend a private or public elementary or secondary school.
- You must give your case trustee documentation of your actual expenses, and you must explain why the amount claimed is reasonable and necessary and not already accounted for in lines 6-23.
- \* Subject to adjustment on 4/01/19, and every 3 years after that for cases begun on or after the date of adjustment. \$ **0.00**
30. **Additional food and clothing expense.** The monthly amount by which your actual food and clothing expenses are higher than the combined food and clothing allowances in the IRS National Standards. That amount cannot be more than 5% of the food and clothing allowances in the IRS National Standards.
- To find a chart showing the maximum additional allowance, go online using the link specified in the separate instructions for this form. This chart may also be available at the bankruptcy clerk's office.
- You must show that the additional amount claimed is reasonable and necessary. \$ **39.00**
31. **Continuing charitable contributions.** The amount that you will continue to contribute in the form of cash or financial instruments to a religious or charitable organization. 11 U.S.C. § 548(d)(3) and (4).
- Do not include any amount more than 15% of your gross monthly income. \$ **0.00**
32. **Add all of the additional expense deductions.** \$ **539.00**  
Add lines 25 through 31.

### Deductions for Debt Payment

33. **For debts that are secured by an interest in property that you own, including home mortgages, vehicle loans, and other secured debt, fill in lines 33a through 33e.**

To calculate the total average monthly payment, add all amounts that are contractually due to each secured creditor in the 60 months after you file for bankruptcy. Then divide by 60.

#### Mortgages on your home

33a. Copy line 9b here => **Average monthly payment**  
\$ **2,850.00**

#### Loans on your first two vehicles

33b. Copy line 13b here => \$ **0.00**

33c. Copy line 13e here => \$ **0.00**

33d. List other secured debts

Name of each creditor for other secured debt

Identify property that secures the debt

Does payment include taxes or insurance?

☐ No

☐ Yes

\$

☐ No

☐ Yes

\$

☐ No

☐ Yes

\$

**-NONE-**

33e. Total average monthly payment. Add lines 33a through 33d

\$ **2,850.00**

Copy total here=>

\$ **2,850.00**

## Exhibit 2 - Berman Projected Disposable Income Calculation

Debtor 1 **William John Berman**

Case number (if known) **19-60230-pcm11**

**34. Are any debts that you listed in line 33 secured by your primary residence, a vehicle, or other property necessary for your support or the support of your dependents?**

- ☒ No. Go to line 35.
- ☐ Yes. State any amount that you must pay to a creditor, in addition to the payments listed in line 33, to keep possession of your property (called the *cure amount*). Next, divide by 60 and fill in the information below.

Name of the creditor	Identify property that secures the debt	Total cure amount	Monthly cure amount
<b>-NONE-</b>		\$ _____ ÷ 60 = \$ _____	
		Total \$ <b>0.00</b>	Copy total here=> \$ <b>0.00</b>

**35. Do you owe any priority claims - such as a priority tax, child support, or alimony - that are past due as of the filing date of your bankruptcy case? 11 U.S.C. § 507.**

- ☒ No. Go to line 36.
- ☐ Yes. Fill in the total amount of all of these priority claims. Do not include current or ongoing priority claims, such as those you listed in line 19.

Total amount of all past-due priority claims \$ **0.00** ÷ 60 \$ **0.00**

**36. Projected monthly Chapter 13 plan payment**

Current multiplier for your district as stated on the list issued by the Administrative Office of the United States Courts (for districts in Alabama and North Carolina) or by the Executive Office for United States Trustees (for all other districts).  
To find a list of district multipliers that includes your district, go online using the link specified in the separate instructions for this form. This list may also be available at the bankruptcy clerk's office.

Average monthly administrative expense

X \_\_\_\_\_

\$ \_\_\_\_\_ Copy total here=> \$ \_\_\_\_\_

**37. Add all of the deductions for debt payment.**  
Add lines 33e through 36.

\$ **2,850.00**

### Total Deductions from Income

**38. Add all of the allowed deductions.**

Copy line 24, All of the expenses allowed under IRS expense allowances \$ **6,219.00**

Copy line 32, All of the additional expense deductions \$ **539.00**

Copy line 37, All of the deductions for debt payment +\$ **2,850.00**

Total deductions..... \$ **9,608.00** Copy total here=> \$ **9,608.00**



# Exhibit 2 - Berman Projected Disposable Income Calculation

Debtor 1 **William John Berman**

Case number (if known) **19-60230-pcm11**

## Part 2: Determine Your Disposable Income Under 11 U.S.C. § 1325(b)(2)

39. **Copy your total current monthly income from line 14 of Form 122C-1, Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period.** \$ **12,243.00**

40. **Fill in any reasonably necessary income you receive for support for dependent children.** The monthly average of any child support payments, foster care payments, or disability payments for a dependent child, reported in Part I of Form 122C-1, that you received in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child. \$ **0.00**

41. **Fill in all qualified retirement deductions.** The monthly total of all amounts that your employer withheld from wages as contributions for qualified retirement plans, as specified in 11 U.S.C. § 541(b)(7) plus all required repayments of loans from retirement plans, as specified in 11 U.S.C. § 362(b)(19). \$ **400.00**

42. **Total of all deductions allowed under 11 U.S.C. § 707(b)(2)(A).** Copy line 38 here => \$ **9,608.00**

43. **Deduction for special circumstances.** If special circumstances justify additional expenses and you have no reasonable alternative, describe the special circumstances and their expenses. You must give your case trustee a detailed explanation of the special circumstances and documentation for the expenses.

Describe the special circumstances	Amount of expense
<b>Non-Filing Spouse's Expenses and Debt Payments</b>	\$ <b>500.00</b>
	\$
	\$

Total \$ **500.00** Copy here=> \$ **500.00**

44. **Total adjustments.** Add lines 40 through 43 => \$ **10,508.00** Copy here=> -\$ **10,508.00**

45. **Calculate your monthly disposable income under § 1325(b)(2).** Subtract line 44 from line 39. \$ **1,735.00**

## Part 3: Change in Income or Expenses

46. **Change in income or expenses.** If the income in Form 122C-1 or the expenses you reported in this form have changed or are virtually certain to change after the date you filed your bankruptcy petition and during the time your case will be open, fill in the information below. For example, if the wages reported increased after you filed your petition, check 122C-1 in the first column, enter line 2 in the second column, explain why the wages increased, fill in when the increase occurred, and fill in the amount of the increase.

Form	Line	Reason for change	Date of change	Increase or decrease?	Amount of change
<input checked="" type="checkbox"/> 122C-1		<b>Air Force Separation Benefits will end in November 2020. Monthly amount listed on Line 10 will cease after the equivalent of 24 months' worth is received by the Debtor, leaving 36 months in which the income should be excluded.</b>	<b>10/1/2021</b>	<input type="checkbox"/> Increase <input checked="" type="checkbox"/> Decrease	\$ <b>1,243.00</b>
<input type="checkbox"/> 122C-2	<b>10</b>			<input type="checkbox"/> Increase <input type="checkbox"/> Decrease	\$
<input type="checkbox"/> 122C-1				<input type="checkbox"/> Increase <input type="checkbox"/> Decrease	\$
<input type="checkbox"/> 122C-2				<input type="checkbox"/> Increase <input type="checkbox"/> Decrease	\$
<input type="checkbox"/> 122C-1				<input type="checkbox"/> Increase <input type="checkbox"/> Decrease	\$
<input type="checkbox"/> 122C-2				<input type="checkbox"/> Increase <input type="checkbox"/> Decrease	\$



# **EXHIBIT 3**

## **BERMAN LIQUIDATION ANALYSIS**

		Exhibit 3: Berman Liquidation Analysis			
Itemized below are any <i>changes</i> to the most recent bankruptcy Schedules A&B, attached/at docket # →→→→			44		
<b>1. Total from bankruptcy Schedule A:</b>	\$ 568,060.00	A/B.28. Tax Refunds	\$ -		
Less: Anticipated Cost of Sale	\$ (45,444.80)	A/B.29. Family Support	\$ -		
Less: Quicken Loans:	\$ (319,560.00)	A/B.30. Amounts Owed to You	\$ -		
Less: Debra Berman 50% Interest	\$ (101,527.60)	A/B.31. Insurance Policies (Cash Value)	\$ 72,288.00		
		A/B.32. Inheritance Interests	\$ -		
	\$ -	A/B.33. Claims Against Third-Parties	\$ -		
<b>2.Adjusted total, Schedule A property</b>	\$ 101,527.60	A/B.34. Other Claims	\$ -		
<b>3. Total from bankruptcy Schedule B</b>	\$ -	A/B.35. Other Financial Assets (specify):	\$ -		
A/B.3. Vehicles	\$ -	William Lloyd Developments, Inc. / Debra Berman	\$ 107,690.33	<b>Notes on valuation:</b> Subject to any court order or attached continuation sheet: (1) Real estate valuation assumes 8% costs of sale. (2) "Avoidance action" on Line No. 5 is Debtor's share of funds contributed to grandchildren.	
A/B.4. Watercraft	\$ -	A/B.53. Other Property of Any Kind (specify):	\$ -		
A/B.6. Household goods and furnishings	\$ 2,450.00	Lawn equipment	\$ 100.00		
A/B.7. Electronics	\$ 500.00	Hand tools	\$ 200.00		
A/B.8. Collectibles	\$ 400.00	<b>4.Adjusted total, Sch. B property</b>	\$ 560,211.44		
A/B.9. Equipment for Sports/Hobbies	\$ 150.00	<b>5. Other (e.g., avoidance actions-itemize)</b>	\$ 10,870.29		
A/B.10. Firearms	\$ -	<b>6. Total Assets (In.2+4+5)</b>	\$ 672,609.33		
A/B.11. Clothes	\$ 500.00	<b>7. Claims Senior to General Unsecured Claims</b>			
A/B.12. Jewelry	\$ 200.00	7a. Secured claims (after bifurcation)	\$ -	Hypothetical chapter 7 trustee fees	
A/B.13. Non-farm Animals	\$ -	7b. Chapter 7: trustee fees (from sidebar)	\$ 14,181.54	\$ 672,609.33	Total disbursements
A/B.14. Other Personal and Household Items	\$ -	7c. Chapter 7: other costs of administration	\$ -	\$ (453,978.58)	Minus exemptions
A/B.16. Cash	\$ 200.00	7d. Chapter 11: unpaid professionals' fees	\$ 50,000.00	\$ -	Minus adjustments*
A/B.17. Checking Account	\$ 35,937.53	7e. Chapter 11: other administrative costs	\$ -	\$ 218,630.75	= Net disbursements
A/B.18. Stocks (Publicly Traded), Bonds, Etc.	\$ -	7f. Priority claims (bankruptcy Schedule E)	\$ -	§ 326 calculations	
A/B.19. Closely Held Business Interests	\$ -	7g. Debtor's exemptions (bankr. Sch.C)	\$ 453,978.58	\$ 5,000.00	X 25%= \$ 1,250.00
A/B.20. Gov. and Corp. Bonds	\$ -	7h. Other/adjustments (See Notes on valuation)	\$ -	\$ 45,000.00	X 10%= \$ 4,500.00
A/B.21. Retirement Accounts	\$ 309,775.58	<b>8. Total Senior Claims (In. 7a to 7h)</b>	\$ 518,160.12	\$ 168,630.75	X 5%= \$ 8,431.54
A/B.22. Security Deposits	\$ -	<b>9. Net available for unsecured (In.6-In.8)</b>	\$ 154,449.21	\$ -	X 3%= \$ -
A/B.23. Annuities	\$ 29,820.00	10a.Gen. unsecured claims from schedule F	\$ 2,527,208.63	\$ 218,630.75	Totals \$ 14,181.54
A/B.24. Tuition Programs, Education IRAs	\$ -	10b.Other gen. unsecured claims (if any)	\$ 4,864,951.00	Adjustment (if any) \$ -	
A/B.25. Trusts	\$ -	<b>11.Total gen. unsecured (In.10a+10b)</b>	\$ 7,392,159.63	Trustee Fee \$ 14,181.54	
A/B.26. Patents, copyrights, other IP	\$ -	<b>12. Ch. 7 Estimated Dividend (In.9/In.11)</b>	2.1%	*Adjustments would include, e.g., estimated refunds, and non-estate funds/ assets returned to third parties.	
A/B.27. Licenses, Franchises, Other Intang.	\$ -	<b>13. Plan Dividend (Classes 5 and 7)</b>	\$ 160,000.00		

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DEBTORS' AMENDED JOINT DISCLOSURE STATEMENT (OCTOBER 8, 2019)** was served on the parties indicated as "ECF" on the attached List of Interested Parties by electronic means through the Court's Case Management/Electronic Case File system on the date set forth below.

In addition, the parties indicated as "Non-ECF" on the attached List of Interested Parties were served by mailing a copy thereof in a sealed, first-class postage prepaid envelope, addressed to each party's last-known address and depositing in the U.S. mail at Portland, Oregon on the date set forth below.

DATED this 8th day of October, 2019.

TONKON TORP LLP

By /s/ Timothy J. Conway  
Timothy J. Conway, OSB No. 851752  
Ava L. Schoen, OSB No. 044072  
Attorneys for B. & J. Property Investments, Inc.

## **CONSOLIDATED LIST OF INTERESTED PARTIES**

### ***In re B. & J. Property Investments, Inc.***

U.S. Bankruptcy Court Case No. 19-60138-pcm11

### ***In re William J. Berman***

U.S. Bankruptcy Court Case No. 19-60230-pcm11

## **ECF PARTICIPANTS**

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- TOBIAS TINGLEAF toby@shermlaw.com, darlene@shermlaw.com
- US TRUSTEE, Eugene USTPRegion18.EG.ECF@usdoj.gov

## **NON-ECF PARTICIPANTS**

### **B. & J. TOP 20 UNSECURED CREDITORS**

Class Action Plaintiffs  
c/o Brady Mertz  
Brady Mertz PC  
345 Lincoln St.  
Salem, OR 97302

Portland General Electric  
POB 4438  
Portland, OR 97208

Judson's Plumbing  
POB 12669  
Salem, OR 97330

City of Salem  
555 Liberty St. SE, Room 230  
Salem, OR 97301

Comcast Business  
POB 34744  
Seattle, WA 98124-1744

Pacific Source  
POB 7068  
Springfield, OR 97475-0068

Pacific Sanitation  
POB 17669  
Salem, OR 97305

US Bank  
POB 6352  
Fargo, ND 58125-6352

Miller Paint  
390 Lancaster Dr. NE  
Salem, OR 97301

HotSuff Spas & Pool  
1840 Lancaster Dr. NE  
Salem, OR 97305

NW Natural Gas  
POB 6017  
Portland, OR 97228-6017

Chateau Locks  
1820 47th Terrace East  
Bradenton, FL 34203-3773

Century Link  
Bankruptcy Dept.  
600 New Century Parkway  
New Century, KS 66031

Walter Nelson Company  
1270 Commercial St. NE  
Salem, OR 97301

Statesman Journal  
340 Vista Ave. SE  
Salem, OR 97302

Pacific Screening  
POB 25582  
Portland, OR 97298

DEX Media  
Dex Media Attn: Client Care  
1615 Bluff City Highway  
Bristol, TN 37620

AllAmerican Insurance  
POB 758554  
Topeka, KS 66675-8554

US Bank  
POB 6352  
Fargo, ND 58125

Saalfeld Griggs PC  
Attn: Hunter Emerick  
Park Place, Suite 200  
250 Church St. SE  
Salem, OR 97301

Susan Stoehr  
24310 S Hwy 99E, Space G  
Canby, OR 97013

Stephen Joye  
Fischer, Hayes, et al.  
3295 Triangle Dr SE #200  
Salem, OR 97302

Nancy Wolf  
2008 SE Sturdevant Rd  
Toledo, OR 97391

### **BERMAN SECURED CREDITOR**

Quicken Loans Inc.  
635 Woodward Ave.  
Detroit, MI 48226

### **BERMAN TOP 20 UNSECURED CREDITORS**

Class Action Plaintiffs  
c/o Brady Mertz  
Brady Mertz PC  
345 Lincoln St.  
Salem, OR 97302

Saalfeld Griggs PC  
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